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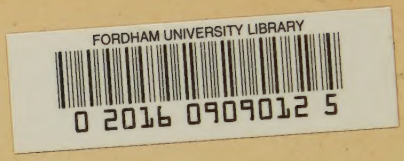

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A REPUBLIC OF NATIONS

A STUDY OF THE ORGANIZATION OF A FEDERAL LEAGUE OF NATIONS

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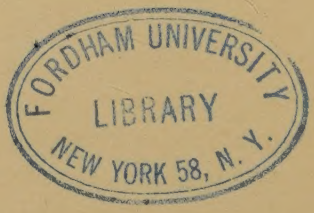

PREFACE

No discussion of international relations during the progress of a great war such as is now raging can be expected to be altogether accurate in respect of mere details. Not only the geographical boundaries of states, but forms of government and important national policies, are shifting from day to day. Even a discussion limited to fundamental principles like that contained in the following pages cannot be entirely free from the influence of these sudden and far-reaching changes.

For example, Russia is treated throughout this work as a great empire under one government, indeed as one of the Great Powers. As these words are written this is far from the fact, but who can tell what will transpire in that wide unknown region before the war is ended or within a limited period afterwards? She may reappear a great despotic empire as before, or a united limited monarchy, or a magnificent federalized republic of many states; or she may ultimately be divided into many small states or groups of states, thus forfeiting her claim to be one of the Great Powers.

In view of these uncertainties it has not been deemed wise to make any modification of the tentative plan of international government herein proposed, which

supposes the continued existence of Russia under a single government as one of the Great Powers.

In other respects also it has been found necessary to base this discussion upon facts as they were known to exist before the war, without heeding alterations that may have resulted, or may in the future result, from the conflict. Thus, in estimating the populations of the various states engaged, no regard has been paid to possible reductions due to the casualties of war, or to the conquest and temporary occupation of territory.

These things, however, are not of the essence of our theme. The fundamental principles of an international government would be much the same whether Russia constitutes one great nation or many small independent states; whether or not there be a shift of population from the control of one state to that of another; whether or not forms of government shall have changed from monarchy to republic.

But there are certain principles, for the establishment of which this war is now being waged, which are essential to the foundation of any league of nations leading to an international control of the causes of war. Among these are the inviolability of treaties and the dominance of international good faith; the abolition of militarism; the right settlement of great war-breeding political issues now pending, such as the self-determination of nationalities and the rectification of ancient wrongs; and the substitution of a spirit of justice and equality among the nations in the place of

the selfish and oppressive policies too prevalent in the past.

All these results may reasonably be hoped for in the event of a complete victory for the United States and their Allies, and with their advent it would not be so great a step to an adoption by the nations of some such form of international government as that advocated in the pages to follow.

As the thirteen American Colonies were prepared through their joint labors and sufferings during the American Revolution for the Articles of Confederation, and later for their closer union under the Constitution, so the Allied Nations at least, having passed through years of co-operation, trial, and suffering together, seem now ready to accept some form of permanent league or alliance which, while guaranteeing to each its rightful and proper independence in the control of its internal affairs, will also adequately guarantee each against oppressive and unjust violations of that independence by neighbors stronger or better prepared to utilize their strength.

The author will indeed be glad if the book shall contribute in any degree to the solution of the many profound problems of statecraft that must be settled satisfactorily before there can be assurance that never again shall humanity be subjected to such an ordeal as it will have passed through during the terrible years of this war.

R. C. M.

University of Virginia,
May, 1918.

INTRODUCTION

The human race has with greater or less success worked out many difficult governmental, political and sociological problems, but all would doubtless agree that it has never set for itself a more serious task than the discovery and application of a feasible and practicable plan that will abrogate the necessity of war as a method of redressing disputes between nations.

Of late years considerable progress has been made in the organization and establishment of "arbitral courts," to which the nations may submit their disputes, and "commissions of inquiry" whose duty it is to ascertain the facts in an international controversy. Steps have also been taken to encourage and facilitate the effectual use of the "good offices" of mutual friends, and the use of mediation and conciliation. And the time seems to be near when the nations may establish an international court, with judicial, instead of merely arbitral, authority and jurisdiction, which will perhaps be able to deal with certain cases with which courts of arbitration could not satisfactorily cope.

The judicial court differs from a court of arbitration in the manner of its organization, in the mode of reaching its decision, in the decision itself, and in the value

of the decision as an authoritative precedent upon the matter with which it deals.

A judicial court is created, and fully organized in advance of litigation, so that its members are not selected by the parties to the controversy and are able to decide impartially between the contentions of the litigants. On the other hand, an arbitral court is composed of members selected by the parties after the dispute has arisen (usually two by each who, themselves, select an umpire). From this circumstance there usually results more or less of a tendency on the part of the arbitrators to regard themselves, not as impartial judges, but as advocates or representatives or personal friends of the party selecting them.

While therefore a judicial court will attempt to arrive at the facts and the law governing the case, and thus reach a decision, the tendency of an arbitral court is in many cases to conciliate, mediate or compromise the claims of the litigants, so that its decision is quite likely to be unsatisfactory to both parties. The decision of the judicial court, on the other hand, will generally be favorable to one party or the other, and while of course eminently satisfactory to the successful litigant, will often, if fair and just, be less objectionable to the unsuccessful party than would be a mere compromise.

Finally, the mode of organization of the judicial court, the greater learning and distinction of its members, and the fact that it seeks impartially to construe the law and apply it to the facts of the case, all tend

to give it a greater dignity and its opinion greater authority than an arbitral court can claim.

In cases susceptible of these modes of trial, if each party to the dispute is sure of his rights and *bona fide* desires and designs a peaceable settlement, he would prefer usually to submit his case to a judicial court which would decide the questions involved without compromise, rather than submit it to an arbitral court in whose decision each litigant will perhaps find only part of the redress to which he deems himself entitled. But if each is more or less doubtful of his claims, or suspects that he is claiming more than he is really entitled to, both would probably welcome a resort to an arbitral, in preference to a judicial court, since each would be sanguine of securing something. Finally, a third case might arise wherein one of the parties feels sure of his rights, while the other is very uncertain of his. In such case, the tendency of the former would be toward the judicial court, while that of the latter would be toward the court of arbitration, and, should neither yield, a settlement by court procedure would become impossible. Such a situation might well be fraught with grave perils.

It seems to be the belief of many that the mere establishment of a judicial court to which the nations may resort for a settlement of their disputes will in itself go far to solve the problem of international wars. But this can scarcely be said to be the conviction of those who have given the most profound thought and study to the subject. They realize that the field of

usefulness of such a court is limited, as is that of the court of arbitration, the commission of inquiry, conciliation and mediation, the good offices of mutually friendly nations and diplomatic correspondence. Each has its appropriate function in settling or helping to settle certain sorts of international controversies; but despite all, there is a large and important field of disputes, for the settlement of which none of these is in the least adequate.

Even an incomplete analysis of the various sorts of controversies that may arise between nations will suffice to show how many and how constantly recurring are the disputes in which none of the modes of redress above mentioned is of great value.

If we classify all international controversies into two great classes,—*first,* disputes behind which, on one side or both, lie ulterior evil or illegitimate designs of aggression or attack upon the rights of other nations, and *second,* disputes arising spontaneously and without ulterior designs, it is obvious that none of those of the first class would be subject to treatment in any of the modes already considered, and indeed that under present conditions nothing but war or the fear of war would prove adequate to prevent the threatened attack. The offender in such case would doubtless put forward untenable claims as an excuse for his oppressive and tyrannical conduct, but such claims would not be justiciable, that is, capable of settlement in a court of justice or arbitration, because the offender does not intend, and would not allow, them to be thus settled. For the

like reason, commissions of inquiry, conciliation, mediation, good offices, and diplomatic protests would all alike be of no avail. His design is to use force or fraud against his neighbor and under existing conditions nothing but force or the fear of it will deter him.

Suppose, for example, a nation urged by dynastic, military, or territorial ambitions bent on taking the territory of its neighbor; or suppose it, influenced by cupidity and greed of wealth, determined to capture forcibly or fraudulently, and without regard to the rights of its neighbors, certain trade routes or seats of commercial influence, or resolved, by the use of tariffs or the unfair use of a favorable geographical position, to engage in unfair competition against other nations; or suppose it, influenced by the spirit of nationalism, to contemplate a union of those of its race who are the subjects of neighboring powers through the use of force; or suppose it is filled with a desire to overawe and bully its neighbors, so that it indulges to a dangerous extent in militarism and jingoism. These are not uncommon manifestations among the nations, and none of them are justiciable or remediable in any way except by war or the threat of it.

But this is not the only class of disputes wherein the remedies before mentioned would be often inadequate to prevent war. Even in the case of honest disputes behind which lurks no evil design of aggression, many, indeed, most, would not be justiciable, and could only be adjusted, short of war, through diplomacy,

the good offices of mutual friends, mediation, compromise, or possibly arbitration. Whether they would actually be settled in any of these modes or would lead to war would depend, as such matters always have depended, on the self-restraint of the nations involved and the earnestness of their desire to reach a peaceful settlement.

Among this group of controversies may be classed:

1. Misunderstandings and wrongs committed unintentionally, or by accident or mistake.

Such disputes as these lose all their importance after the facts are understood and usually are readily adjusted by diplomatic correspondence. They need no special consideration.

2. Disputes arising from invasions of national pride, honor, or prestige.

If these invasions result from mere accident, mistake, or innocent misunderstanding, they belong properly to the first class, and involve little danger of war. They are dismissed with a diplomatic explanation or apology.

But if they are intentional,—the result of a *bona fide* insistence upon its rights by each nation, confident in the rightfulness of its attitude and assured that it would be injurious to its honor, dignity, interest, or safety to recede, then the controversy becomes dangerous and carries the seeds of international complications.

Such disputes, involving as they do national honor or national prestige,—the position of the nation among

its fellows,—are not easily justiciable, but must ordinarily be adjusted, short of war, by the good offices of mutual friends, mediation, suggestions, or offers of compromise, and the like,—only occasionally, if turning on questions of fact or of law, by arbitral or judicial action.

3. The next class of *bona fide* international disputes consists of those which arise from clashes of sincere and honest national policies, such as the Monroe Doctrine, the Balance of Power, national and racial sympathies, military preparedness, commercial policies, etc.

Such disputes are neither justiciable nor arbitrable. We cannot, for instance, conceive, under existing conditions, of the American people agreeing to submit to a judicial or arbitral court the question whether a strong foreign power shall be permitted to seize territory in Central or South America or in Canada. It is not a question of law or justice at all, but one of *policy,* of self-preservation, the decision of which would never willingly be left to an alien body, be it a judicial court or a court of arbitration or conciliation.

And what is true of the Monroe Doctrine, as it applies to America, is equally true of the great principle of the Balance of Power in Europe, of the open door to trade in China, of the right of a nation to prepare itself in a military way against dreaded attacks, of great nationalistic and racial movements like Pan-Slavism, Pan-Germanism, and others. Disputes like

these, arising from sources of profound national instinct or policy cannot be settled or checked by judicial or arbitral decrees.

Aside from conciliatory and persuasive measures, there is at present no recourse save to war or the threat of it, if the execution of such national policies results in the invasion of the rights and liberties of other States. The establishment of international judicial or arbitral courts would be of no avail.

4. Another class of disputes between nations would consist of those of long standing, arising from some long past act of gross injustice, such as the annexation of territory formerly belonging to another nation, or the robbery of a nation's liberty or independence. That these unjust acts of the distant past are not always forgotten is sufficiently proved by the French yearning for Alsace and Lorraine, the Italian call to "Italy Unredeemed," and the Polish vision of a reunited Poland.

Such festering sores as these upon the international body are not curable by judicial or arbitral treatment. They can only be healed, if at all, by the slow lapse of time or by the bleeding process of war.

5. Another class of disputes consists of those arising from breach of treaty.

These may often be adjusted without resort to war. The breach may be regarded as an abrogation of the treaty, justifying the other party in regarding it as void. In many cases, doubtless, the breach would present an arbitral or justiciable question, in the settle-

ment of which the international courts might take a prominent part. But in other cases the breach would present political and not justiciable questions, and for the decision of these courts would be useless. Thus, many writers on International Law lay down the doctrine that a nation is justified in violating, and is bound to violate, a treaty, if its execution becomes morally impossible by reason of the destructive damage such execution would inflict on itself or on another nation. It is evident that the question raised by the violation of a treaty, when based upon this ground, is much more of a political than a legal nature,—one which it would be impossible to expect any nation to leave to a judicial or arbitral tribunal to decide.

6. The last class of international controversies to which reference will be made would embrace those arising from disputed facts or from disputed principles of law applicable to the facts. Given both litigants willing to rest upon their legal rights, these constitute clearly and distinctly justiciable questions, to the decision of which an international court would be fully competent.

While a considerable proportion of the disputes likely to arise between nations may be expected to partake more or less of the character of this class of controversies, not so many would be entirely of this sort, but rather partly of this class and partly belonging to one of the other classes before mentioned. And the more the characteristics of other sorts of disputes enter into the case, the less the chance of the questions

raised being justiciable and capable of decision by judicial or arbitral process.

While the enumeration above given is perhaps not exhaustive of all the various sorts of dispute that may arise between nations, it is sufficiently complete to demonstrate how few of such cases would be susceptible of settlement through an international court. Under existing conditions, therefore, it cannot be expected that the establishment of international judicial courts or courts of arbitration will go very far to prevent wars between nations.

The fact is that these, as well as all the other remedies that have been mentioned, have for their object the redress of grievances after they have arisen. They do not propose or attempt to prevent the original rise of the grievance. The international doctor has habitually treated the symptoms and effects of the disease, but has not attempted to go to the root of the trouble, find the cause of the disease and prevent the occurrence of that cause. Not until this is recognized as the scientific method of dealing with the problem will its solution be near.

If it were possible today to erect a world court, with the widest judicial jurisdiction conceivable, and to gain or compel the consent of every nation to submit to that court every international dispute of a justiciable character, the world would be but little better off, so far as the actual danger of war is concerned. While human nature remains as it is, with no other restraint than that of an international court, there would be the

same national ambitions and greed, the same use or dread of force or fraud, the same need of preparedness against attack, the same fear of the stronger by the weaker and smaller States, and often the same conquest and destruction of the liberties of the less powerful of the family of nations. Only justiciable disputes could be settled by the court and wars grow far more frequently out of political, than out of justiciable or legal, controversies.

But, it will be said, if the experience of the United States be examined, it will be found that the Supreme Court has habitually exercised the jurisdiction to decide disputes arising between the sovereign States of the American Union, as the British Judicial Committee of the Privy Council has also determined controversies between British colonies and provinces. It will be pointed out that, in all the many interstate controversies so far brought before the Supreme Court of the United States, that court has never yet failed to find that the dispute was justiciable nor declined jurisdiction on the ground that the question was political. The consequence has been that all these disputes have been amicably settled, and neither war nor the threat of it has arisen out of any of them. Why then, it may be asked, would not the analogy hold in the case of an international court, if the nations will agree to submit their disputes to its cognizance?

If it could be shown that the happy results apparent in the American system were due solely or even chiefly to the establishment of a court with jurisdiction to de-

cide interstate disputes, the analogy between it and a world court would indeed be striking, and the presumption strong that similar results would follow as between the nations upon the establishment of a world court. But when we carefully contrast the circumstances that would surround the two courts, we find that there is no real,—at least no close,—analogy between them.

The powers and rights that may be exercised by one nation towards another may with accuracy be divided into two classes, *first,* political powers, and *second,* legal rights. Out of the exercise of political powers would arise for the most part political or non-justiciable disputes; out of the exercise or invasion of legal rights would arise the legal or justiciable controversies. The only way, therefore, to eliminate the possibility of any disputes between nations or States other than those which are justiciable or susceptible of judicial or arbitral determination, would be to eliminate the international or interstate *political* powers, which are the war-breeding powers.

This elimination, as between the States of the American Union, the Constitution of the United States has accomplished, as has also the constitution of every federal republic or empire in the world today, as between its component States. It is because of this great accomplishment, not because of the mere establishment of a court with jurisdiction to determine disputes between the component States, that such disputes are always justiciable and are always susceptible of judicial settlement.

An examination of the Constitution of the United States, for example, will reveal that each of the United States has surrendered either entirely or to the States United, to be exercised by them all jointly, and not by each separately, the following powers: (1) to declare war; (2) to keep troops (exclusive of militia) and ships of war; (3) to acquire the territory of another State, except by consent of the legislatures of the States concerned as well as of Congress; (4) to levy duties on imports or exports; (5) to regulate interstate or foreign commerce; (6) to make treaties or alliances with foreign States; (7) to make agreements or compacts with other States except with the consent of Congress; and (8) to deny to citizens of sister States the rights and immunities of citizens. The surrender of these political and military powers has at one stroke removed from the realm of interstate relations the right and the ability of each State to exert political power or influence as against sister States of the Union. It follows that no dispute thenceforth arising between two of the United States could be political in character, but must always be within the limit of legal and justiciable questions.

How different the existing situation of the nations of the world! They have not only not surrendered to the whole jointly their individual power to declare war and to keep troops and war vessels, but have been steadily and persistently increasing their armaments year by year. They therefore not only possess inherently the force to compel other States to do their

will, but their ability to use it promptly and efficiently constantly increases.

Possessing this inherent and constantly augmenting power, they are more and more subjected to the temptation to exert it unlawfully and tyrannically against weaker sister nations, since they have never surrendered, as have the American States, the power to acquire the territory of another State without its consent or to maltreat its citizens or subjects, or the right to levy heavy tariff duties on international commerce or to secure control, as far as might be within their power, of international trade, trade routes and seats of commerce, regardless of the just and equal rights of other nations. None of these powers, nor the right to make alliances, whether for aggressive or defensive purposes, nor the right to make (or break) treaties with other nations have they surrendered. And out of the exercise of these powers arise the so-called "political" questions, which are usually non-justiciable, having no relation to abstract justice, but based on theories of policy, self-interest, or self-preservation.

If therefore we would have an international court serve the same purpose as between the nations as a supreme federal court among the component States of a federal union, some device must be utilized that will eliminate "political" controversies between them, arising out of the exercise of interstate "political" powers, and reduce their disputes to those of a legal or justiciable character.

That the only effective device by which this may

be accomplished is the creation of some sort of federal union of nations and a surrender by each to all jointly of its right to exercise individually those of its political powers (and no other) the exercise of which would tend to breed war, is the conclusion to which the writer's reflections and study have led him, and his efforts will be devoted in the following pages to establish this contention and to work out feasible and practicable international agreements as to the respective powers of the league and its component nations, together with such checks as will effectively safeguard the real rights and liberties of the States and peoples concerned. These agreements, for the sake of convenience, have been phrased in the language of a tentative written constitution, which will be found in the Appendix, and which will form the basis or framework of the future discussion, though it would be possible perhaps to arrive at fairly similar results in some other form.

It may be said also in this connection that while in form the Constitution herein proposed bears some resemblance to that of the United States, it differs widely from it in many,—it might perhaps with truth be said in most,—substantial respects.

Before entering upon that discussion, however, it may be well to inquire whether any device might be suggested, short of a surrender by the nations of the right individually to exercise the "political" powers above mentioned, which would attain the end desired, and whether the attainment of that end would be

worth the sacrifice of national political independence involved.

Taking the last point first, it presents a question, the answer to which would obviously depend upon how desirable is the end to be attained and upon the amount of sacrifice involved. These values in turn must be measured by the yardstick of the individual reader's convictions and judgment.

Certainly, prior to the great European War, few of this generation would have been found of an imagination so vivid as to possess a real vision of war's horrors, or so impressed by them as to advocate the slightest surrender of the sovereignty and independence of the individual nation in order to secure the blessings of a rightful and abiding peace.

But that war has searched the hearts of many, especially in the bleeding countries of Europe. The world is prepared to examine realities and discard ancient illusions and shibboleths which would formerly have presented impassable barriers to freedom of thought.

Has not the general conception of the sovereignty and independence of nations hitherto been somewhat of an illusion—somewhat of form without substance, —somewhat of a mental confusion between an unbridled license and a true liberty and independence? Is any nation in the world today absolutely sovereign and independent? Are they not all bound in chains by inviolable treaties and by national necessities of policy, greed, jealousy, dread of attack? Even

prior to the great war, despite their boasted independence, have not the nations groaned under the burden of armaments, and will not their groans be doubled and redoubled when they feel the full weight of the burdens added by the war? Are they not constantly haunted by fears and suspicions? Are these the indications of national freedom and independence, or of an international license that usurps the name.

Would it then, after all, be such a violent break with the past realities (not illusions) if the nations should come to an agreement whereby each would surrender to the joint exercise of all that portion only of its so-called independence which is susceptible of use to the injury of its sister nations? Would not its own feeling of peaceful security from the attacks of others compensate each for the surrender of the right to inflict injustice and harm on others? It is not suggested that any part of its rightful and just independence shall be sacrificed but only that portion which would be either itself wrongful and unjust, or which is susceptible of such exercise as to inspire sister nations with suspicion and fear of unjust and oppressive consequences.

The rights each nation would be called upon to resign would be the power to regulate or control commerce between the component nations; to acquire the territory of other States; to mistreat their citizens; to lay burdens upon imports or exports; to keep more than a certain proportion of troops or war vessels;

to make treaties of alliance or confederation with other States; and to declare war, except when invaded or in such imminent danger thereof as not to admit of delay.

Since almost all wars grow out of the desire to seize international trade or keep other nations from seizing it, out of the desire to acquire territory, or out of the mistreatment by one State of the citizens of another, or out of a suspicion that these things are being attempted or contemplated, if the power of the individual nations to exercise these functions were surrendered to the joint action of all, there would be no need of larger armies or navies than would be demanded by the internal conditions of each country, nor of alliances, nor of the power to declare war. There would thus be only three real surrenders, the surrender of the power to regulate international commerce to the injury of other nations, of the power to acquire their territory, and of the power to treat unjustly or oppressively the citizens of other States. This would surely seem not an onerous price to pay for national security and insurance against future wars, provided such checks are supplied as would effectually induce the international league to whom some of these powers would be confided to exercise them impartially for the best interests of all the component nations, freeing those nations from all fear that they might be exercised to their destruction or oppression.

Let us consider briefly, in the last place, whether there is any other practicable device than that just

mentioned which might effectually secure the nations against the unlawful, unjust or tyrannical abuse by sister nations of the "political" powers.

No other restraint suggests itself except the vague and tardy influence of public opinion. The past experience of humanity has not encouraged us to repose much confidence in the mere power of opinion to prevent that class of political dispute which so often leads to war. Nor is this surprising when we remember that to the effective operation of public opinion two conditions are essential, knowledge of the fundamental facts of the controversy and time for the crystallization of sentiment upon the merits of it. These conditions, difficult enough of attainment in national affairs, are in most cases impossible of fulfillment in the more complex international controversies,—at least until too late to avert disastrous consequences,—however potent they might be in bringing the rupture to a conclusion, in influencing the final adjustment between the combatants, or in compelling them to find or to invent plausible excuses for breaking the peace.

Nor can popular opinion within the disputant States themselves be expected to exert much of an inhibitive power. The people as a whole are accustomed to follow their leaders and know too little of the details of international relations to be able to judge for themselves of the real merits of such controversies. It is easy for the national leaders, if they are so disposed, to give out, keep back or distort information so as to

make the worse appear the better reason and to misguide the nation. The atmosphere of international intercourse is that of secrecy. No real security can be hoped for from this quarter.

There remains then only some form of international organization whereby the mischievous exercise of these interstate political powers shall be controlled or else machinery provided for the peaceful solution of the political disputes sure to result from their uncontrolled exercise. If the nations choose the former alternative, by controlling the causes of war they secure themselves against war itself. If they adopt the latter, the causes of controversy are left to flourish in full vigor, while the effort is expended on the attempt to check the evil consequences.

So far as the surrender of sovereignty and independence is concerned, there would seem to be little to choose between them. An international league for the enforcement of compulsory arbitration or conciliation, with a covenant by all to unite in war or other forcible measures against any nation declining to engage in either form of settlement, however sacred and dear to it the matter involved, can hardly, if successful, be looked upon as a conservator of the sovereignty and independence of the nations. True it would leave the nations free as at present, to exercise their political powers to the injury and oppression of their neighbors, but if the plan were successful they would be held to so strict an accountability for the resulting injuries that they would in effect cease to enjoy

the sovereign independence they now possess to bully, oppress and defraud other nations as they please.

Such a league might prove a more or less efficient safeguard against international wars; but it would certainly not leave the independence of the nations untouched.

But it is submitted that, aside from the inherent difficulty of securing the consent of the nations to any plan effective to prevent war, there are practical obstacles in the way of the successful operation of a plan of this nature arising out of the difficulty that would manifest itself among the nations of the league of securing concert of action in compelling a recalcitrant nation to resort to compulsory arbitration or conciliation. How would each leaguer's proportion of troops, ships, and expense be ascertained? Who would command? How induce the people of the several nations of the league to look with favor upon a war waged to compel a sister and perhaps distant nation to adjudicate questions that to them will often appear to involve mere abstract, technical matters of national policy or international law, about which most of them would know little and care less? Or if a nation be jealous or suspicious of the superior strength, military or commercial, of the State threatened with attack, how shall its zealous support be secured of a concerted action that would prevent such attack? Who would settle the terms of peace? Would not the situation be equally difficult if the nation called on to intervene

were commercially or diplomatically on peculiarly friendly terms with the aggressor?

These are some of the reasons (and others will appear in subsequent chapters) why the plea is made in the following pages that the league take the form of the establishment of a federal international government, by which the nations will either agree, under proper safeguards, to surrender to the government of all jointly their power to injure or work injustice upon their sister States or agree that they shall not be exercised at all. The powers that need be thus surrendered are very few, but very important to the attainment of the end desired. They may be briefly enumerated as follows: (1) The grant on the one hand to the league of the power to regulate international commerce and communication by special legislation for the purpose and, on the other, the surrender by the component nations of the right to tax imports, exports, or the instrumentalities of international commerce; (2) the right to acquire any part of the territory of another nation without the consent both of the latter nation and of the international government; (3) the right to treat tyrannically or oppressively the citizens of other States while within their borders; (4) the right to keep more than a reasonable proportion of troops and war vessels, adequate to the task of internal police, while granting to the joint government the right to keep sufficient troops and ships to guarantee the protection of all; (5) the right to make treaties of alliance and confederation individually with any

nation, or any treaty that would violate the compact of union, while granting to the joint government the power to make treaties with any nation, not a member of the union, concerning matters to which the powers granted to the joint government shall extend; and (6) the right to declare or make war, unless in case of invasion or imminent danger thereof, while granting to the league the right to declare war against States without the union.

It has been said before, but it may well be repeated,—indeed too much emphasis cannot be laid upon the statement,—that, conceding the surrender by the nations of the first three of the powers above enumerated, there would be little or no need of the exercise of the last three, so that under the plan presently to be considered, the nations would in reality only be called upon to surrender three items of their present independence, namely: the right to control or regulate international commerce generally, but only to an extent that would be considered by the joint judgment of all as essential to the general interest, (though as to the right to tax or burden imports, exports, or the instrumentalities of international commerce, the surrender should be absolute); the right to acquire the territory of another State to the detriment of that State or to the detriment of the joint interests of all; and lastly, the right to treat unjustly or oppressively, according to certain designated standards, the citizens of other States while within their borders.

Gone would be the dread of economic bondage, the

fear of territorial conquest, the danger of injustice to citizens in foreign lands. When these shackles are struck from the limbs of the nations, the causes of international war are practically swept away, and with them war itself.

But the nations would rightly prefer to bear the ills they have rather than fly to others they know not of, and unless they can be assured that in the destruction of these age-long chains they do not find other and stronger fetters, they would be justified in declining to try the experiment. Even though it be granted that the general principles above enunciated are sound, yet there remains the great task of devising such automatic checks and balances as will render it impossible that this joint government shall encroach upon the just liberties of the component States or their people. Due care must be taken that a majority of the component States shall not engage in oppressive conduct toward a minority or even toward a single State; that a majority composed of the small States, shall not override the united will of the fewer, but more influential, "Great Powers," and that the more influential shall not override the wishes of a majority composed of the smaller States; that the international government, both in its legislative and executive departments, be at all times subject to the joint control of the component States; that a small minority on the one hand shall not be permitted to block the legitimate will of the majority of the States in the ordinary conduct of business, while on the other, in regard to matters of

vital importance, a bare majority of States shall not be permitted complete control; that the internal affairs of a State be not interfered with at all by other States acting jointly or separately; that a constituent State do not persistently neglect or disregard its pledged obligations to the union or its sister States,—in short, that all needful precautions be taken to insure an administration of the international government in the common interest of all, as evidenced by the free and untrammeled voice of each in the international legislature.

It is hoped that the following study, while doubtless imperfect and inadequate in details, may at least serve to suggest a basic foundation upon which to rear an international organization which will remove the great subjects already mentioned, the breeders of international strife, from the baneful influence of secret and often sinister diplomacy, and deliver them to the open and public debate of an international legislative body, wherein every nation will be fairly represented.

NOTE.—The reader's attention is specially called to the index-heading, "Checks and Balances," wherein will be found a complete analysis of the many safeguards against invasions of national and individual independence contained in the constitution proposed.

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CHAPTER I

FEDERAL UNIONS PREVENT WARS BETWEEN THE COMPONENT STATES

I

Foundations of Social or Civic Morality Among Men

In the first stages of every primitive society there is a period during which the laws protecting individual rights are but vaguely defined and weakly enforced. Each man's ability to hold his own depends upon his strength or cunning or upon the alliances he can form with others for common protection.

But as the society becomes more stable and civilized, influences begin to work which materially improve the condition of mankind. A spirit of co-operation and of mutual aid and dependence takes the place of the former spirit of rapacity; common interests make men more friendly; suspicion and distrust give way to mutual confidence; selfish ambition and cupidity yield more or less to an appreciation of the rights of others;

and violence surrenders dominion to the gentler arts of reason and peace.

What is the cause of this great change in the general attitude of men? It is the rise and development of LAW, divine and human, and the proper enforcement of justice and right. This marks the birth of a social or civic morality among men, unknown to the era of lawlessness and of the personal application of the maxim that might makes right.

All individual morality is based upon four broad foundations: The fear of consequences, the hope of reward, hereditary predispositions, and environment. All these are directly or indirectly supplied and built up by the operation, as between man and man, of just and wise law, firmly enforced by a superior power.

So long, therefore, as we suppose men born without hereditary predispositions to justice and respect for the rights of others; surrounded by others with as little conception of these ideals as themselves, and with as little understanding or appreciation of them; owing such ease, comfort and happiness as they enjoy to violence and the unjust disregard of other's rights; and strong enough to be devoid of much fear of consequences;—we have a condition in which ordinary morality, and the dictates of reason and justice, can find but little root.

But with the advent of Law, properly enforced, protecting the weak against violence and punishing the oppressor, all this is changed. The teachings of divine law arouse the conscience, while the fear of certain

punishment under human law suffices to deter most men from its ruthless violation. The hope of reward ceases to lie in the violent or fraudulent taking of the property of others, but finds its source in the acquisition of goods by the honest labor of men secure in the peaceful possession of their own, or in their desire to obtain and to deserve the good opinion and plaudit of their fellows and the approval of their own consciences. It is soon discovered that these constitute much greater rewards than could be attained under the old system of lawlessness and license. And as these influences spread amongst men, they speedily become reinforced by those of hereditary predisposition to just dealings and peaceful conduct, and of an environment of the like kind.

Thus it is that the advent of Law brings about a condition among men in every civilized society, by reason of which violence and private wars among them are rare.

II

Social Morality Among the Nations

There is a family or society of nations, but its condition is closely akin to that of the primitive societies of men, to which allusion has been made. As yet, the nations, in their dealings with each other, have by no means advanced along the road of moral conceptions as far as has the individual unit of society.

Nor is this surprising when we remember that the

nations generally have not been subjected to the influences that make so strongly for the development of the morality of the individual.

The laws governing international relations have not the sanction of a superior power. They are vaguely outlined, and are obligatory only so long as the nations' self-interests demand their recognition. The only well-recognized law controlling them in the past has been that might makes right. Accordingly much the same phenomena have presented themselves in this society of nations as in that primitive society of men already referred to.

The strong nation, unafraid of consequences, despoils the weaker of its territory, its independence, or its wealth, and finds its highest reward in the violent or fraudulent acquisition of the liberty or property of its neighbors. Its environment has not been such as to improve these tendencies, since all the rest of the society of nations would think and act like itself under the same circumstances. Nor has there been any influence operating upon the nations analogous to the hereditary predispositions to just and right dealings, which operate so powerfully to create and keep alive individual morality.

Hence in the society of nations, as in that of primitive men, we find the same tendencies to violence, rapacity, cupidity, ruthless ambition, suspicion, and distrust, constant injustice, constant conflicts.

That the absence of social morality among nations is due to the absence of Law and a superior power

adequate to enforce it, is seen from the fact that within the last century there has been a considerable development of it, synchronizing with the many international congresses and conferences that have from time to time been held for the purpose of discussing and adopting laws to regulate international relations,—and this, despite the fact that but very inadequate and imperfect instrumentalities have been as yet created for the enforcement of the laws made.

III

Law Between Nations Supplied and Wars Averted by Federal Unions

Important and valuable testimony to the fact just alluded to,—that an international morality, which will put an end to international abuses and the wars resulting from them, will always be developed in the presence of effectual and enforceable international law,—is to be found in the practically complete success with which the various federal unions of the world have not only averted wars between their component States, but have substituted, in the place of the vindictive national passions that would soon engender war between them if left to themselves, a spirit of co-operation and friendly emulation for the common weal entirely unknown as between separate nations. The advent of law among nations is thus seen to produce much the same effects as among individuals.

The German Empire, Switzerland, the Dominion of Canada, the Australian Commonwealth, the Argentine and Brazilian Republics, all speak a common language on this point.

The only exception is the United States, whose record in this respect has been dimmed by the War of 1861 between the States. But upon due examination it will be found that this exception is apparent rather than real, since that war was due to an irreconcilable, but none the less sincere, difference of opinion upon the point of the constitutional right of a State to secede from the Union;—a point which the Constitution had not expressly provided for. No one acquainted with the American people would believe that a war would ever have occurred upon this point if the Constitution had explicitly declared either for or against the right of secession. That war therefore cannot justly be said to have resulted on either side from a want of social morality or from lawlessness, but rather from the desire of each party to the quarrel to enforce the law as each saw it.

With respect to the United States, however, it can certainly be said that, with the exception of this war, her experience has been the same as that of all the other federal unions. The component States have exercised toward each other that courtesy, self-restraint and consideration which take the place in such federations of the rapacity, greed, ambition, and mutual jealousy and distrust, characteristic of the relations existing between distinct nations.

The British Empire, too, should be mentioned in this connection. For though it is not in form strictly a federal union, it is actuated in the government of its colonies and territories by much the same principles that regulate the relations between a federal union and its component States, the principles of freedom and independence in all local matters and protection against invasion, in return for the more or less centralized control of interests common to the whole Empire. And here, once more, we find the operation of the same law,—the component States actuated by good will towards each other and a desire to serve the common good of all, instead of a constant striving for unfair advantages, with the corresponding jealousies it engenders.

Is it not then a just and reasonable conclusion that there are elements in every federal union that tend to destroy the grounds of ordinary international quarrel and to insure peace among the component nations? That such has been the result in the actual experience of all federal unions, with the qualification mentioned as to the United States, there is no doubt.

IV

Some Distinctions Between Ordinary Federal Unions and a Federal Union of Independent Nations

In considering whether the conclusion just reached would apply in like manner or degree to a general

union of nations, it is important to observe that all existing federal unions are composed of States, all of which have much the same institutions, language, and nationality. It might be questioned whether quite the same successful results would follow upon a federal union of nations speaking different languages, possessing different institutions and racial characteristics, and accustomed to different modes of thought.

There is another point of distinction to be noted between a federal international union and the federal national unions with which the world is familiar. The latter have always been designed for two purposes;—first, to substitute, as between the component States, the co-operative and friendly for the rapacious and militaristic spirit; and, second, to create to a greater or less degree out of the component States a single nation. For the purpose last mentioned it has always been necessary to bind the States together by a close union, they surrendering to the federal government a considerable number of sovereign rights they might have exercised as independent States, even though no danger of war might result from the exercise of them. The federal international union, on the other hand, being designed mainly to preserve the peace between the component nations, and to create a new State only in a very limited sense, need not, and indeed could not, be so close a union as the others nor require the surrender of so many important sovereign powers.

In the case of an international federation, these two

grounds of distinction would perhaps operate in some degree to diminish the salutary operation of that law underlying federal unions, which makes them very complete conservers of the peace between the component States; but it by no means follows that this influence would be seriously impaired either in kind or degree. If we remember that, in case of such a union, the component States, through the federal legislative and executive departments, would be co-operating much more constantly than now, and would thus come better to understand each other's view points; that the war powers, and others calculated to cause conflicts between them would be surrendered to the federal government, with a corresponding disarmament of the nations themselves; and that actual disagreements between them would be determined by the decrees of the federal judiciary, backed if need be by the influence of the entire union;—there is little reason to doubt that the causes of war between the nations would be effectually abolished or robbed of their harmful qualities, and that a reign of international law would be established in the place of the existing dominion of a universal international license;—ushering in peace and concord where now prevail violence and war.

CHAPTER II

THE PEACE-MAKING ELEMENTS OF A FEDERAL UNION

I

The War-Checking Powers of a Federal Union

In the preceding chapter it has been pointed out that the political experience of mankind clearly teaches the lesson that groups of independent States may successfully avoid war amongst themselves by entering into a federal union; and that this is true even when the number of component States is large, as in the case of the United States, composed now of nearly fifty great commonwealths.

Why do these federal unions possess this universal attribute,—for it is much more than a tendency,—the elimination of wars among its members?

The answer is found in the nature of a federal union and its inherent qualities, which naturally and inevitably destroy the germs of war as between the component nations, and without attempting any direct alterations of human nature, divert the war-breeding passions of men into safer and saner channels.

What then are these fundamental and inherent qualities of the federal union? If we turn to the existing federations for an answer and examine them to discover those attributes that are common to them all, we must find among these the particular principles necessitating this like effect.

The most important of these common phenomena which would strike the attention of the observer is the fact that all such unions have adopted the principle of a surrender to the federal government of certain powers, the exercise of which would be of common interest to all the component States, with a correlative reservation of independence to those States in all matters of local concern only.

And always among the POWERS SURRENDERED by the nations severally we find the power to control war; the power to control commerce between the component States and with foreign nations; the power to impose duties on goods imported or exported, or to expand their territories without the consent of the federal government; the power to make at least certain kinds of treaties; the power to keep armaments, unless subject to the control of the federal government; and the power to determine for themselves the mode and measure of redress for alleged wrongs committed by sister States, such disputes being made justiciable by a tribunal constituted for the purpose, whose decrees may be backed by the combined influence of the States in union.

Other powers also, having no special relation to the

preservation of peace between the component nations, are usually conferred upon the federal government, such as the control of the currency, banking, copyrights, and other national, but not war-breeding, powers, and varying in number and degree with the grade of national strength and centralized power it is desired to create in the federal government. But the purpose of granting such powers as these, with a corresponding weakening of the component States, is in the main to create a single nation of the composite group, and not merely to prevent war between the States concerned.

It is among the first class of powers, therefore, rather than the second, we must look to find the reason for the fact that by federation nations save themselves from the horrors of war. Reviewing these powers as they have been enumerated, it is difficult to select any as not fulfilling an important part in the accomplishment of this result.

May we not justly conclude, then, that in the formation of a federal union for the preservation of peace among the component nations, it would be unsafe, to say the least, to omit any of these from the powers to be granted to the proposed federation? It may, or it may not, be found convenient to include other powers also, but these at least should certainly be included.

II

The Causes of War Enumerated

It may be asked, how is it certain that the surrender of all the powers above mentioned are essential to preserve the peace of nations? Is there any other reason to believe so than the fact that all existing federations have provided for the surrender of these powers on the part of the nations entering into them?

A careful analysis of the causes or motives that induce wars between nations,—omitting from consideration civil wars and wars *bona fide* waged for self-preservation or in behalf of another oppressed nation (neither of which could occur if the other party to the war were not unjustified in the conduct leading to it)—will show that all wars other than those just mentioned spring from one or more of the following sources:

1. The lack of a proper international morality; so that nations scarcely hesitate to engage in conduct towards other nations which men of ordinary civic morality would be ashamed to stoop to with reference to each other;
2. National cupidity, with reference to territory or trade;
3. National ambitions, military or political;
4. National pride or honor;
5. National prejudices and ignorance or misunder-

standing of the ideals and characteristics of other nations;

6. National jealousies and suspicions; and

7. The absence of an assured method of determining *bona fide* disputes between nations otherwise than by a resort to force.

III

National Immorality

As to the first of these,—national immorality, as shown in the existing conditions of international lawlessness or license,—it has been attempted to explain in the first chapter how a federal union operates to check it, as between the component States, substituting a spirit among them of co-operation and friendly emulation for the common good in the place of the spirit of disintegration and potential hostility that normally prevails between separate independent nations. Reference to that explanation will suffice.

IV

National Cupidity

National cupidity, or the undue desire for national aggrandizement either in the direction of territory or of trade or both, is a fruitful source of international strife.

This desire for territory may arise from the wish to

exploit its resources or trade to the enrichment of certain classes in the State, or from the wish to secure other supposed advantages in commerce, such as convenient shipping ports or monopolies of trade with the people inhabiting or adjacent to the territory; or it may spring from the assumed military advantages to accrue to the nation from its possession, or from the supposed political strengthening of the nation arising therefrom, such, for example, as the chance it affords to have the nation's surplus population migrate thither, remaining under the original flag and allegiance, rather than lose all future benefits of that population through emigration to other countries.

This national yearning for increased territory is neither improper nor calculated to stir up strife between nations so long as it is confined to territory not in the present possession of any other nation. But unfortunately in modern times all the desirable territory of the world's surface is possessed and occupied; and hence any present national desire of this sort must content itself with the acquisition of undesirable territory, or else must look to the forcible or fraudulent acquisition of the territory of another nation, to which the former has no right save that of predominant might. The consequence is that in proportion to the desirability of the territory upon which a nation has fixed the eyes of its affection is the danger of war to obtain it. And whether, as an economic or military question, the territory when obtained is worth the cost

of securing it is a matter generally lost sight of in the final outcome.

It is to be observed that if component nations were to surrender to a federal government their right to impose duties on imports and exports and other restrictions upon international trade and commerce, and also their war powers, all need, and the corresponding desire, for increased territory would at once vanish, and this cause of war, as between such nations, would be abolished. This has been the experience of all existing federal unions as between their component States.

The same principle would also apply, under similar conditions, to abolish wars between such nations resulting from national desire for increase of trade. By giving the control of the international commerce of the nations concerned to the combined nations as represented in a properly organized federal government, as every existing federal constitution does, the temptation is removed from the several nations to use unfair and unjust means to promote their own commerce at the expense of their neighbors, so that justice and right will on the whole prevail in such regulations rather than injustice and greed; and thus another fruitful cause of war has, as between those nations, been abolished, and trust and confidence between them has to that extent replaced suspicion and jealousy.

V

National Ambition

In the next place, national ambition either for military or political greatness is a constant source of aggression and war. These are indeed, in the last analysis, one and the same. For while it is possible that national political aggrandizement may be attained by other methods than the military, it is always true that the ultimate purpose of national military success is a political, and usually a territorial or commercial, aggrandizement.

But if the effect of a federal union is to abolish, as between the component nations, the temptation to acquire territory or to augment the national commerce by violent or unjust means, the national desire for political predominance is thus deprived of all its noxious consequences, and nothing of it is left but the beneficent ambition to shine in ability and usefulness to the common weal among the sister stars of the same constellation.

VI

National Pride or Honor

The same results follow in the case of national pride as a cause of war. As between independent nations, there is no surer way of bringing on war than to offer an affront to national pride or national honor,

because each nation is jealous and suspicious of the other, and fearful that, should it show the least sign of weakness or fear, other nations are ready to pounce upon it, or at least ready to entertain doubts of its courage and to impose unjust and improper demands. It is because of this quickness to resent insults or offensive conduct (real or supposed), even at a cost perhaps ruinous to itself, that the nations are so punctilious in their dealings with each other. Slight departures from established international customs with regard to these matters may produce serious consequences.

The federal union, as between the nations composing it, supplies the remedy for this, not by destroying national pride, honor, and patriotism, but by removing the necessity for a prompt resentment of an affront offered by another component nation. Just as a man, living in a civilized community and knowing that the law protects him from unprovoked violence, can afford to overlook an affront to his dignity rather than go to the extreme length of killing the offender to avenge it, so a nation which is a member of such a union, aware that neither the offending nation nor others would be permitted to use force against it, can afford to overlook the offense. But as a matter of fact such affronts would never be likely to occur, unless by accident or misunderstanding, for all temptation to offer them would be lacking.

Again, a people's sense of national pride or honor is sometimes invoked to support a war of aggression,

the real design being to secure territory or trade while the people themselves are led to believe that it is waged to avenge an insult or to preserve the nation's integrity. Here too the existence of a federal union would serve as a check.

VII

National Prejudice and Ignorance

Our next cause of war arises from national prejudices and ignorance of the aims, ideals, virtues, and characteristics of other nations. Not that this, of itself, often forms a motive for war, but it sometimes powerfully co-operates with other influences in producing wars,—wars which would never occur, if the nations involved understood each other's motives.

As between its component States, a federal union presents more or less of a relief from these national prejudices and misconceptions. The representatives of these nations are constantly thrown together in the conduct of the federal government, and the nations themselves are continually co-operating in various ways under the common laws and policies, and are necessarily thrown into much more intimate relations than would be probable had they remained entirely independent. The freedom of trade, the absence of friction in the mutual intercourse of their citizens, common interests and co-operation, and a hundred other influences are constantly at work to lead them to a better understanding of one another.

It is true that this tendency,—strongly marked in all of the existing federal unions, composed as they are of States whose people are usually of the same nationality, speaking the same language, possessed of much the same laws and political institutions,—might not be actually so pronounced in a union composed of nations differing radically in these respects; but there can be little doubt that the beneficial effects in the latter case would be proportionately as great, and probably much greater, as the prejudices and misconceptions to be removed would be so much the more extensive.

VIII

National Jealousies and Suspicions

Next in our enumeration of the causes of war come national jealousies and suspicions. To establish that these, perhaps with no sound basis for them, suffice sometimes to cause war, we need look no further than to the titanic European struggle. It might be that the national and popular suspicions and jealousies on all sides that caused this war were not based on real facts. That the convictions and assumptions of the several nations concerned were erroneous is entirely immaterial if those nations held and believed them. The war would certainly have followed, whether or not the various assumptions were correct.

The immediate causes of the war were that Austria

truly or falsely suspected Serbia of designs upon her territory; Russia suspected Austria, despite her disclaimer, of ultimate designs upon Serbian sovereignty and territory; Austria and Germany suspected that Russia's racial sympathies for Serbia were a mere blind to conceal her desire for territorial acquisitions or influence in Austria or the Balkans; Germany suspected that France was encouraging Russia in order that she might seize the opportunity to recover Alsace and Lorraine; France suspected that Germany was stirring up the strife because the present was the best time to conquer and weaken France; England suspected that Germany would, if victorious, seize the Belgian and French coasts in order the better to attack her at a convenient season; while Germany suspected England of being the *deus ex machina* who inaugurated the whole turmoil in order to seize the opportunity to humble Germany, destroy her naval power, and thus secure her own superiority on the high seas and her predominance in commerce.

It is not material to the present discussion which, if any, of these suspicions were based on real facts, since the nations involved, especially the peoples, acted on their convictions that their respective suspicions were well founded. What this stupendous calamity does prove is, in the first place, that wars may originate in international suspicions and distrust, whether based on true or false premises; and, in the second, that if these nations had been united by an effectual compact of federal union, by virtue of which they would have

been under no temptation to rob each other of territory or to extend their commerce by forcible, fraudulent or unfair means at each other's expense, it would have been impossible for their peoples to have entertained these suspicions, and there would have been no war.

Indeed, without this concrete illustration, the conclusion is a necessary one that if a federal union has the effect, as between the component nations, of abolishing all the other causes of war heretofore discussed, it must also destroy that which grows out of international jealousies and suspicions, since such distrust can only subsist upon the fear of unjust and aggressive attack for some of the reasons before mentioned. There are no others that have been revealed in history except the last one of our enumeration, which we are now briefly to consider.

IX

Absence of Adequate Peaceable Modes of Redress

The seventh and last of the enumerated causes of war is the absence of any assured method of peaceably and finally determining *bona fide* international disputes.

In the existing conditions of international relations, it is true, attempts have been made to supply means of settling such disputes by the establishment, through international agreement, of the Hague Courts of Arbitration. These have been quite successful in a cer-

tain class of cases,—cases wherein the differences of the contending nations are due to their respective interpretations of disputed facts or disputed principles of law, not involving important political consequences. But these tribunals have proved themselves totally inadequate to deal with cases of such character that either contending nation is unwilling to surrender the decision of the question out of its own hands, or is suspicious that the antagonist might be unwilling to abide by the decision reached.

Less successful attempts have also been made by the Hague Conference to establish a real international court for the settlement of justiciable disputes, but the plan has broken down under the double obstacles of inability to organize the court upon lines satisfactory to the nations, and to provide any properly organized international force to execute its mandates. So far as concerns this class of disputes, it is manifestly essential to establish some device for their final settlement, or else war, as the final arbiter, is not only always possible, but may sometimes become necessary.

No existing federal union has found it a matter of very great difficulty to establish such a court and clothe it with the power to pronounce final decrees which, if necessary, may be enforced through the exercise of the combined influence of the States in union. The federal constitutions having already removed all the political causes of war between the component States, no potential conflicts remain except those arising in respect to matters of strict legal right, and

these may readily be solved through judicial proceedings.

Thus, whether we view the success of federal unions as preventives of war from the standpoint of human experience, or, as has been attempted in this chapter, from the *a priori* standpoint of natural cause and effect, the conclusion is the same. Political science can point to few principles more firmly established than that such unions prevent wars between the component nations,—not through the application of actual force or the invasion of the just and proper independence of the States concerned, but by substituting international law for international license in the regulation of their conduct towards each other, thus diverting the riotous and tumultuous tide of human passions into the calm and deep-flowing streams of human reasonableness and justice. And all this may be accomplished without the sacrifice of the real independence, the welfare or the prosperity of the nations concerned, but always, as experience has proved, greatly to their advancement.

CHAPTER III

FEDERAL UNION OF INDEPENDENT NATIONS PROPOSED

A serious proposal of the adoption by the nations of the world, or by the leading nations, of a federal form of international government would be doubtless met by the nations themselves with fear, jealousy, suspicion, doubt, and perhaps ridicule. However it might be regarded by the peoples who must bear the burden of armaments and war, crowned heads and ruling powers might resent the idea of any international power which could in any sense be said to be superior to their own; and rulers and peoples alike would fear that in surrendering the necessary powers to the federal government they might sacrifice the proper independence of the nation; that the federal government might become a Frankenstein,—a monster of usurped and colossal powers, threatening to destroy its creators; that other component nations or combinations of them might obtain control of this great machine and use it to their own aggrandizement and to the detriment of the helpless minority; that the larger and more powerful nations might combine to tyrannize over the weaker, though perhaps the more numerous members; or on the other hand that a majority of the weaker nations

might override the wishes or threaten the rights of the minority of stronger members.

But all such arguments lose much of their force when it is remembered that the same objections have actually been made to the organization of every existing federal union, yet in each case the fears were proved by actual experience to have been without foundation; in each case it has been found that the checks and balances provided in the organization of the federal government have sufficed to avert the dangers anticipated.

Before the nations will be induced to assent to any plan of union, it must be shown that it contains within itself such checks and balances as will fully protect them against the unjust and unconstitutional aggressions of federal power; the minority of the nations in the union against the improper action of the majority; the more numerous, but weaker, nations against the acts of the stronger, and *vice versa;* and even the reserved rights of a single nation when invaded by the unanimous aggression of all the rest. These, and many other safeguards must be provided in any plan that would prove acceptable.

The difficulties in devising such a plan are admittedly great, but in the light of experience afforded by the constitutions of existing federal unions and a careful analysis of existing international conditions, it would seem possible to propose a plan which might at least serve as a basis for discussion, however far removed it may be from the final practical form such a

solemn and important compact would be likely to take.

The succeeding chapters of this book, therefore, will be devoted to the consideration of some of the very difficult and delicate problems presented in the organization of a federal league of nations, the powers to be granted to it or surrendered by the nations concerned, and the powers to be reserved by them; the proper limitations upon the powers granted; the constitutional relations of the component nations to each other and to the Union; the modes of amending and establishing the compact as an instrument of government; and the many checks and balances needful to secure, on the one side, the effective operation of the federal government, and on the other, the just and proper independence of the component nations, and the absence of friction as between themselves or as between them and the federal government.

For the sake of convenience of discussion, arbitrary terms have been used in designating the union, the compact, and the officials supposed to act under it. Thus the union is spoken of as "The United Nations"; the compact of government, as the "Constitution" of the United Nations; the legislative body as "the Congress"; its two houses, as the "Senate" and the "House of Delegates," respectively; the chief executive officer, as "the prime minister"; the Cabinet, as the "Council of Ministers"; the highest international court, as the "Supreme Court," with a "Chief Justice" at its head; and the constituent units of the

Union as "component nations" or "component States."

It is to be observed also that since this union of nations is designed for the purpose of abolishing wars between them, and not to establish a single new nation, the union must necessarily be less close than are any of the existing federal unions (the purposes of which are to create single nations out of their component States, as well as to prevent war between their members); and especially so since, in our case, the members would differ so radically in language and political and legal institutions and ideals.

For these and other reasons, the Constitution of the United States, as creating the least centralized and nationalized of these unions, has been selected as the starting point and the fundamental foundation of our study, which will follow in the main the order of treatment laid down in that instrument, but with many important and substantial additions, omissions, and modifications, all of which will be examined as briefly as possible.

The tentative Constitution will be found set out *in extenso* in the Appendix, together with the Constitution of the United States, in parallel columns, so that the divergences may be seen at a glance.

Upon reference to the Appendix it will be noted that the proposed international Constitution is divided into eleven Articles, as follows:

Article I.—The Legislative Department, its Organization and Powers;

Article II.—The Executive Department, its Organization and Powers;

Article III.—The Judiciary Department, its Organization and Powers;

Article IV.—The Limitations upon the Powers of the United Nations;

Article V.—The Limitations upon the Powers of the Component Nations;

Article VI.—The Relations of the Component Nations to Each Other, and to the Union;

Article VII.—The Reserved Rights of the Component Nations;

Article VIII.—The Supremacy of the International Constitution, Laws, and Treaties;

Article IX.—Amendments to the Constitution.

Article X.—The Discipline of a Component Nation;

Article XI.—The Establishment of the Constitution.

It will conduce to clearness if the same general order be followed in the investigation of the problems involved in this study.

CHAPTER IV

ORGANIZATION OF THE LEGISLATIVE DEPARTMENT

I

Distribution of Powers

In devising a plan for the organization of a federal league of the nations, the first problem that presents itself is the fundamental question, how shall the powers of government be distributed. It would be quite a radical departure from the previous practice of the nations if, following the example of the American and other federal unions, three departments of government be created,—the legislative, the executive, and the judicial.

And yet it would not really be quite so radical as at first glance it appears, even omitting from consideration the established examples of existing federal unions. The germs of all three of these departments may be said to have been already planted as between the independent nations.

In the Hague Conference we see in embryo an international legislative assembly, though much hampered in its work by lack of organization and by inter-

national suspicions and jealousies. In the Hague Courts we behold the beginnings of an international judiciary, also sadly handicapped by the lack of organization and of an international executive force to aid in the execution of its decrees. And it is not too much to affirm that the nucleus of an international executive power lies in the various bureaus which have been from time to time established for the administration of international projects and agreements.

It may at least be said that the establishment of these world agencies effectually proves the need already felt for them, and indicates the great benefits that might result from their development upon a self-sustaining and self-executing basis.

And if, in addition to these considerations, we review the experience of the federal unions now existing, the conclusion seems to be forced upon us that, in order to create a federal government adequate to keep the peace of the world, it is essential that the limited powers granted to it shall include the legislative and executive, as well as the judicial.

It is, therefore, assumed as a starting point that the proposed Constitution must grant to this federal union of nations all three sorts of powers, and that the federal government must be organized into the corresponding legislative, executive, and judiciary departments.

II

Legislative Department of One or Two Houses?

The international conferences and congresses hitherto called have always been organized on the basis of a single chamber, in which each nation represented would have an equal voice, each having a veto upon the acts of the conference and bound by them only if it assent thereto. While some good results have been attained, the fact remains that this is an impracticable basis upon which to rest a truly legislative body from which may be expected that prompt and detailed legislation which would be necessary to the operation of a federal union of nations. There must be to a certain extent the rule of the majority, and should each nation insist upon the right to veto any and all measures that do not meet with its approval, no legislation of importance would be likely to be enacted. The union would be doomed to failure from the beginning.

But it does not follow that a nation should, in no case, possess the right of veto upon the legislation of the central body. On the contrary, there is every reason why a single nation or group of nations should be authorized to exercise this right in cases where, in their judgments, the federal legislature is exceeding the powers conferred upon it and is seeking to infringe the reserved sovereign rights of the component nations. The details of this veto power, however, will be re-

served for future examination at a more appropriate place. It is only sought here to point out that the nature of the legislative power to be granted under the proposed international Constitution should be of a kind different from that hitherto exercised in international conferences and congresses. In a federal union of nations, in regard to legislation clearly within the powers granted, the majority must rule. Bearing in mind this very material change in conditions, we are in a better position to consider the problem to be investigated.

Until now the custom of nations has been to claim equal representation in international conferences in virtue of their equal sovereignty. Should this continue to be the rule in our proposed international legislature, or should the nations, by virtue of the superior population, influence, or wealth of some of them, be represented in proportion to such population or influence, in the family of nations; or ought there to be a combination of the two forms of representation, so that both sovereignty and population (or other measure of national influence and importance) be taken into account?

We must pause here to inquire what, for purposes of representation in an international legislature, would constitute the best and most available measure of the relative influence and importance of nations.

Many elements enter into the influence a State may exert in international affairs. Its population, its military or naval strength, its commerce, domestic and

foreign, and its resources, the state of its arts and sciences, all these and other things besides may enter into the equation, though those mentioned would certainly constitute the most obvious and the most important elements.

In the organization of an international government, the main purpose of which is to do away with war and the necessity for large armaments, it would seem plain that the present military or naval strength of a nation ought to play no part in the question of the voice it should have in the management of the affairs of common interest committed to the international government. To make these a basis of representation in the international legislature would be to base a permanent arrangement on an evanescent quality, for if the international organization were successful, all very great differences in military or naval strength would soon disappear. These considerations would seem sufficient to eliminate this element from the problem.

Nor, because of its extreme indefiniteness, does it seem possible to make the condition of civilization within a State, that is, the condition of the arts and sciences there, a basis of representation. Different nations have different ideals of civilization, of art, literature, music, labor conditions, law, criminology, trades, and manufactures. Who is to judge between them? Who could establish a common standard? This also, it would seem must be eliminated as a basis of representation in the international government.

There remain to be considered a nation's commerce and resources, and its population, as practical measures of its influence and importance in international affairs.

To make use of the commerce and resources of a nation rather than population as a measure of its influence would appear in the first place to be setting up wealth above humanity, the desire for riches above human rights and liberties. This would not seem to be a sound basis upon which to rest any government, national or international. But if this objection be swept aside as theoretical only, others may be presented of a practical sort. How is the commerce of a country to be determined? Would the domestic as well as the foreign commerce of a State be taken into account, or only the foreign commerce? Should its potential and undeveloped natural resources be counted as part of its wealth, and if so how would their value be ascertained? How would the amount of the domestic trade,—all the little daily transactions in every part of the country,—be determined? If foreign trade alone be considered, how much is the country itself responsible for, and how much is due to the enterprise of other countries? Is the country which exports mainly raw materials, and imports highly finished goods on a par with the country which does the reverse, even though the money value of the total foreign trade of each be the same?

Such questions as these throw grave suspicion upon this as a practicable measure of a nation's influence in

world affairs and of the voice it should have in the proposed international government.

Indeed, all things considered, it seems that population is at once the most convenient and the most practicable measure of such representation. It is the most convenient, because it can be more easily and more definitely ascertained than any other. It is the most practicable, because on the whole, it stands in large measure collectively for what each of the others represents individually. As a rule the total wealth of a State holds some relation to its population; so does its commerce, domestic and foreign; as population increases land becomes more valuable; as commerce increases there is greater development of arts and sciences, wages tend to increase, the standard of living becomes higher; even the potential military strength of a nation bears a relation to its population.

Population therefore would seem to be the proper, indeed the only feasible, measure of the influence, wealth, and importance of a nation in international affairs, so that wherever in the plan herein discussed, it becomes necessary to weigh a nation in the scale of these qualities, population is taken as representing them.

There yet remains, however, an important question. There are populations and populations. The population of one State, while as numerous as that of another, may in whole or in part consist of backward peoples, who themselves possess but a dim or shadowy conception of civilization as Europe and America view

it. For example, the population of the British Empire in 1913 amounted to about 396,000,000, of whom about two-thirds were Hindoos; perhaps 63,000,000 were Anglo-Saxons. For purposes of representation (according to population) in the international legislature, ought the 63,000,000 Anglo-Saxons to be counted on the same basis as the remaining 333,000,000 backward peoples?

From the standpoint of the ideal,—at least the European and American ideal,—the Anglo-Saxon population (in the case of the British Empire) ought to count several times more per man than the rest. But the practical difficulties in the way of measuring the proportion of "backward peoples" within each State, as well as of measuring the various degrees of backwardness and ascertaining the boundary line between those that are "backward" and those that are not, seem to present insurmountable obstacles to the application of any logical and general rule for the estimate of population for purposes of international representation based upon the distinction between the comparative "progressiveness" or "backwardness" of peoples or races.

With exceptions or qualifications presently to be noted, we would approach the truth very nearly if we assume that the white nations and peoples of the world are progressive, while the colored peoples and races are in the main backward. It would also be true that it is the aggressiveness and enterprise of the white nations that necessitate the organization of an inter-

national government to preserve the peace of the world, and it is the warfare between them that is so disastrous. The international organization would be primarily an instrumentality of self-government among the white nations, devised to permit them to substitute international freedom and order in the place of the international license that now prevails between them. Incidentally, the colored nations and peoples would profit by the exchange, and ought to be permitted to enter into the organization and thus secure a guarantee of their national rights and liberties also. But they would in general have no right to expect the same representation and the same voice in the affairs of the international government as the white nations and peoples would possess.

At least one exception, however, should be made to this general rule. Japan is one of the Great Powers, and has shown herself as progressive as the western nations themselves. She ought to be admitted into the international organization on the same basis as the white nations.

Listing the Japanese, therefore, for purposes of international representation as "white," let us adopt tentatively and arbitrarily the proportion of one to three as the relative values of "white" and "colored" or "mixed" populations for this purpose, which, for the sake of convenience, we shall hereafter designate as the "*federal* population."

Thus, if we suppose the actual population of the British Empire to be 396,000,000, of whom 63,000,-

000 are white and 333,000,000 are colored or of mixed blood, the "federal population" would be arrived at by dividing the latter numbers by three and adding the quotient to the numbers of the whites so that the *federal* population of the British Empire would amount to 174,000,000. On these numbers, not on the 396,000,000 of actual population, would be based any voice that the British Empire would have in the international government, so far as that voice might depend upon international influence.

Again, the French Republic, according to the figures of 1913, within all its territories possessed a population of about 92,000,000 persons, of whom about 40,000,000 are white and 52,000,000 are colored. Her federal population therefore would be approximately 58,000,000.

Similarly, the population of the German Empire in Europe was in the same year 65,000,000, while the population of its African possessions was 15,000,000. The federal population of the German Empire then (should she become a member of the league) would be approximately 70,000,000.

The total population of the Russian Empire in 1913 amounted to 160,000,000, of whom perhaps 30,000,000 are colored, so that her federal population would have approximated 140,000,000.

Treating the Japanese, for the purposes of this discussion as "white," the federal population of the Japanese Empire in 1913 would number about 54,000,000. If Korea, with 15,000,000 colored population

be included, her federal population would amount to 59,000,000.

Italy, within all her territories, in 1913, had a population of some 32,000,000 whites and 6,000,000 colored, so that her federal population would approximate 34,000,000.

Austria-Hungary in 1913 possessed a population of about 50,000,000, all of whom practically are white, so that the total numbers and the federal numbers would correspond.

The United States possessed a population of some 84,000,000 white and 20,000,000 colored in 1913 (including amongst the "colored" negroes and inhabitants of the Philippine Islands and Hawaii). Their federal population therefore would approximate 90,000,000.

The Netherlands in 1913 had a white population of about 7,000,000, and a colored population in her colonies of some 34,000,000, so that her federal population would approximate 18,000,000.

Portugal, with a white population of about 6,000,000, has a colored population of some 9,000,000. Her federal numbers would aggregate about 9,000,000.

None of the other white European States have any colored populations worthy of consideration, so that we may assume their federal populations to be identical with their actual populations. In 1913 these were estimated approximately as follows:

Spain	20,000,000
Norway	2,500,000
Sweden	5,500,000
* Belgium	7,000,000
Switzerland	3,750,000
Greece	2,500,000
Denmark	2,700,000
Rumania	6,000,000
Serbia	2,500,000
Bulgaria	4,200,000
Montenegro	225,000

The Chinese Republic, with its wholly colored population of 420,000,000, would be able to claim a federal population of 140,000,000, not far below that of Great Britain, about the same as that of Russia, and more than twice as great as that of the French Republic or of the German or Japanese Empires.

It is difficult to conceive that the Great Powers of the world would permit to China in the international councils a voice greater than their own. Her vast size, population, and resources, taken in connection with the backwardness of her civilization and commerce, would constitute her an exception to almost any rule of representation in the international Congress that might be suggested. The probability is that she must be treated separately, and admitted to the union upon

* Statistics as to the population of the Belgian Congo are not at hand for 1913, but in 1916 it amounted to about 15,000,000, which would give Belgium a federal population of about 12,000,000.

special conditions as to the representation and influence to which she shall be entitled.

Passing to the States in America, other than the United States, we are again confronted to no small extent with the problem of colored or mixed races. In some of the Central and South American countries, the great mass of the populations are either colored or of mixed blood, and comparatively few full-blooded whites are to be found. In Haiti and San Domingo the people are practically all negroes. In Mexico, Brazil, Chile, Peru and other of these countries large portions of the population are Indian or of mixed race. Statistics are not at present available to show what proportion of these populations are respectively white and colored or mixed, so that it would not be possible to reproduce here the federal populations of each of these States. The total populations in 1913 were estimated as follows:

Brazil	20,500,000
Mexico	15,500,000
Argentina	7,500,000
Colombia	4,500,000
Peru	4,500,000
Chile	4,250,000
Venezuela	2,600,000
Bolivia	2,270,000
Cuba	2,050,000
Guatemala	1,800,000
Salvador	1,700,000

Ecuador	1,500,000
Haiti	1,400,000
Uruguay	1,110,000
Paraguay	635,000
Dominican Republic	610,000
Nicaragua	600,000
Honduras	550,000
Panama	360,000
Costa Rica	350,000

We are now in a position to resume our discussion of the proper organization of the proposed international legislature or Congress.

In view of the jealousy and distrust now existing between the nations, it may be fairly assumed that the smaller ones would never, in the place of a conference whose conclusions would be binding on no State until ratified, consent to the creation of a legislative body, with binding power, which might be dominated by a combination of the Great Powers, as would be likely in a body wherein representation would be based upon population; and, on the other hand, it is still less probable that the Great Powers would consent to a Union which might be dominated by a majority composed of the smaller States, as would be likely if in the international legislative body the representation of all the States were equal, in virtue of equal sovereignty.

These considerations suffice to eliminate the possibility of either of the two first mentioned forms of

representation in the supposed single legislative chamber, and demand either that the idea of a single chamber be abandoned or that the form of representation be some combination of sovereignty and population, that is, that each nation be entitled to a representation in the federal legislature made up in part of an equal sovereignty equally represented, and in part of an unequal population unequally represented.

For example, suppose it agreed that the representation of the sovereignty of each State shall be six votes from each State, and the representation of population shall be one vote for each four millions of population or fraction thereof. Belgium, with a federal population of 12,000,000, would then be represented in the federal legislature by six votes, representing sovereignty, and three, representing population. Germany, with a federal population of 70,000,000, would have six votes representing sovereignty and eighteen representing population. France, with a federal population of 58,000,000, would have six and fifteen votes, respectively. Italy, with 34,000,000 (federal), six and nine votes; Japan, with 59,000,000 (federal), six and fifteen votes; The Netherlands, with 18,000,000 (federal), six and five votes; Austria-Hungary, with 50,000,000, six and thirteen votes; Norway, with 3,000,000, six and one votes; Sweden, with 6,000,000, six and two votes; Serbia, with 3,000,000, six and one votes; Brazil, with perhaps 9,000,000 (federal), six and three votes; Argentina, with nearly 8,000,000 (federal), six and two votes; Chile, with 3,000,000

(federal), six and one votes; the United States, with 90,000,000 (in federal numbers), six and twenty-three votes; Russia, with 140,000,000 (federal), six and thirty-five votes; and the British Empire, with 174,000,000 (in federal numbers), six and forty-four votes.

Thus, Norway's representation would be increased seven times by the representation of her equal sovereignty; Sweden's would be quadrupled; and Belgium's trebled; while Great Britain's or Russia's would be increased scarcely at all. It is possible that the nations last mentioned might be willing to accept these or similar conditions, but it is hardly conceivable that proud States like Germany or France, occupying intermediate positions in such a ratio of representation would consent on the one hand to so great a proportionate voice in the conduct of the common affairs as Norway's or Belgium's, or so great an actual voice as the British Empire's.

The example above given supposes a ratio between sovereignty and population chosen at random, but the apparently insuperable objections to this ratio would seem to apply as strongly to any other similar ratio that might be selected.

On the whole therefore the conclusion must be reached that no plan of federal government will obtain the approval of the nations which embraces the idea of a single legislative chamber (with a qualification to be noted later).

Discarding this, then, we come next to the examina-

tion of the possibility of a legislative body composed of two chambers.

Attention is at once arrested by the fact that it now becomes possible thus to retain, in part at least, the existing international practice as to conferences and congresses, that is, the equal representation of each State. Such representation may be given in the upper chamber or Senate, while at the same time in the lower chamber, or House of Delegates, the other element may be represented,—the element of national population and influence.

Since no law could be passed without the consent of both houses, every law would have to receive the assent of a majority of all the component nations (in the Senate) and also the assent of the majority of the populous and influential nations (in the House of Delegates). A combination of a few populous States might carry a measure detrimental to the majority of the States through the lower chamber, but it would be checked in the Senate; and, on the other hand, a majority of the States, which might pass measures in the Senate that would be injurious to the fewer, but more populous, nations would be halted in the lower chamber.

Thus by the adoption of the bicameral system advantage can be taken of the great principle of concurrent majorities. These would undoubtedly be the two great contending forces in our international union,—population and influence on the one side and equality of sovereignty, dignity, and rights on the other. The

only way to reconcile them is to give each a veto upon the other, which may be successfully accomplished by the creation of two legislative chambers, the consent of both being necessary for legislation, one of which shall represent by equality of votes the equal sovereignty of the nations, and the other by votes in proportion to federal population shall represent their unequal influence and importance in human affairs.

To illustrate: Let us suppose that the equal sovereignty of the nations in the Senate is represented by two votes from each State, while the ratio of votes to population for purposes of representation in the House of Delegates shall be one vote for every four millions of federal population, or a fraction thereof. Referring to the figures already given as to the federal populations of some of the nations, while in the lower chamber Belgium, with its 12,000,00 of federal population, would have three votes; Germany, with its 70,000,000, eighteen votes; France, with 58,000,000, fifteen votes; the United States, twenty-three votes; Russia, thirty-five votes; and Great Britain, forty-four votes; yet in the Senate each nation would be equally represented, and the consent of a majority of the Senate would be essential to the passage of all legislation.

It is upon this principle that the United States Constitution has organized the federal legislature, and the experience of more than a century and a quarter proclaims that this distribution of the legislative powers has, in critical periods of American history, admirably fulfilled its purpose.

The proposed federal legislature then, we shall assume, ought to be composed of two chambers, one of which should represent the equal sovereignty of the component nations, while the other represents their respective populations (in federal numbers).[1]

It is to be noted that while we have spoken above of two chambers of the legislature, which we have designated respectively the Senate and the House of Delegates, and while we have assumed throughout the creation of two separate chambers, very much the same results may be accomplished with a single chamber, if it is provided that no measure shall be deemed to have been passed or to have become a law, unless it pass the chamber twice,—once by a majority of all the States, voting equally in virtue of equal sovereignty, and once by a majority of the votes of the States, voting unequally in proportion to federal population (giving, for example, to each State, upon one passage of the measure, a voting capacity equal to one vote for every four millions of federal population, or a fraction thereof).

This would constitute in effect two chambers, the main difference between the single chamber thus organized and two actual chambers, being that in the latter case there would be two separate sets of delegates, while in the former the delegates would be actually the same, but would possess a different voting capacity on each passage of the measure.

Thus, if we were to suppose the rules now govern-

[1] See Appendix, Const'n U. N., Art. I, Secs. 1, 2, 3.

ing an ordinary international conference to be altered so as to make the action of the conference binding upon the nations therein represented and at the same time require that any measure, to be binding upon them, must pass the conference twice by a majority of votes, the votes of all the nations upon the first passage to be equal, while on the second passage each nation shall have a vote proportionate to its federal population, the conference would then be transformed into just such a legislative body as we are now discussing. The requirement that a measure, to be binding as a law upon the nations, must have passed the conference by a majority of votes cast upon these two different principles, would have much the same effect as if the conference were itself made up of two separate chambers, organized upon these same principles.

But although the organization of a single chamber after this fashion might be simpler than that of two legislative houses, yet there would seem to be some very practical advantages incident to the actual bicameral system.

In the first place, it is important for the success of an international government that the representatives of the different nations should learn to know and understand each other, as well as the conditions, ideals, and needs prevailing in countries other than their own; and (within reasonable limits) the larger the number of these representatives thus thrown into each other's company, the more widespread would this broadening process become.

In the next place (again within reasonable limits) the larger the number of a nation's representatives present at such gatherings, the wiser will be its government's final action upon questions arising for settlement.

The mere physical limitations of space would stand in the way perhaps of the best interests of the nations in these particulars, if the plan of a single chamber be adopted.

Another important practical argument in behalf of a bicameral legislature consists in the fact that it would in the end probably save time, since one measure might be under debate in one chamber while another was being debated or voted upon in the other, and in any event it would insure a more thorough consideration of each measure both in the legislature itself and by the government of each nation.

Our tentative form of constitution will therefore treat the international congress as actually consisting of two houses or chambers.

III

Appointment of Representatives—Terms of Office

In the existing federal unions, such as the United States, the German Empire or the Australian Commonwealth, the rule has been to provide for the election of the members of the lower house of the federal legislature by the people of the several component

States, and for the selection of members of the upper house either by some branch of the government of each State or by the people thereof.

Thus in the United States the members of the House of Representatives are elected by the people in the several States by districts, while the Senators (it was originally provided) were chosen by the legislature in each State, but by Amendment XVII are now elected by the people of the respective States acting as one electorate. In Germany, the members of the Reichstag are elected by the people as in the United States, while the members of the Bundesrath are chosen by the executives of the several component States, and possess the status of ambassadors. In Australia the States are equally represented in the Senate, but the members of both houses are elected by the people, as now in the United States. In Canada the Senators are appointed from each Province by the governor-general, the members of the House of Commons elected by the people. In Brazil the Senators are elected by the people of each State, as are the members of the House of Deputies. In the Argentine Republic, the Senators are elected by the legislatures of the several Provinces, while the Deputies are elected by the people. In Switzerland the members of the Council of States (Senate) are chosen by the cantons, and the members of the National Council by the people in each canton. In all, the component States or provinces are represented in the lower chamber in proportion to population, and (except in Germany) in the upper chamber equally.

But in our federal union of nations it would be obviously impracticable, even if it were desirable, to adopt the universal principle of popular election of members of either house by the people of the respective States. Some even of the most advanced nations have territorial possessions, the inhabitants of which, while they ought to be taken into account for purposes of representation, know nothing of popular government.

On the other hand, some governments would perhaps be in a position in which they would be unable to obtain the consent of their people to the organization of such a federation unless the nation's delegations in the federal legislature might be made directly responsive to the popular will.

A proper compromise therefore would seem to be a provision that the delegates in both chambers be chosen in such numbers and in such manner as the laws of each component nation shall direct; and shall be subject to recall at the pleasure of the State they represent, in accordance with its laws.

Thus the federal government would be placed directly under the control of the component nations, since their control over their representatives in both chambers will be as plenary and absolute as each nation by its own laws may choose to make it.

This principle of appointment and recall would also do away with the necessity of fixing any particular term of office for the delegations in either house, the entire matter being left to the discretion of each nation.[1]

[1] See Appendix, Const'n U. N., Art. I, Secs. 2, 3, 4.

IV

Sessions of the International Congress—Recesses and Adjournments

In the existing federal unions the rule is to require that the legislative body shall meet at least once a year, adjourning when their business is completed, and subject to be called in extraordinary session by the chief executive whenever exigencies may demand it.

But the complexity and importance of the matters to be debated and determined by this international congress, and the modes of appointment and removal of the legislators, would seem to require that the rule in our proposed constitution should assume rather the opposite form, providing that the Congress remain in perpetual session, subject to such reasonable rests and recesses as the two chambers may agree upon, with the right given to each chamber independently to adjourn for a limited period without the consent of the other.[1]

V

Compensation of Representatives

That the members of the international congress ought to receive compensation for their services cannot admit of doubt. The important question is whether that compensation should be fixed and paid by the

[1] See Appendix, Const'n U. N., Art. I, Sec. 4, cl. 2, 3.

component States or fixed by the federal congress itself and paid out of the treasury of the United Nations.

This point was earnestly and ably debated in the convention that framed the Constitution of the United States, and the wise conclusion reached that a matter so vital to the very existence of the federal government ought not to be left dependent on the liberality and good will of the component States.

This principle has been adopted in our international constitution, but with this necessary qualification:— That since the number of delegates in the delegations from each State has been left to the discretion of that State, the compensation must be proportioned to the number of votes the delegation is entitled to cast, not to the number of delegates.[1]

VI

Privileges of Delegates

Existing federal constitutions accord to the members of their legislatures the ordinary parliamentary privileges of freedom from arrest for trifling offenses and freedom of speech in debate.

These provisions ought to be contained in the international constitution also, with certain modifications.

Following to its logical conclusion the principle adopted, that the component nations shall retain complete control over their respective delegations, each in

[1] See Appendix, Const'n U. N., Art. I, Sec. 6, cl. 1.

accordance with its own laws, the general rule that a legislator's remarks and votes in either legislative chamber are privileged communications, from legal responsibility for which he is exempt elsewhere, must be modified to the extent that, while exempt everywhere else, he is not to be exempt from the consequences of such remarks or votes in the State he represents, except in accordance with its laws.[1]

Again, it will be necessary for the representatives of the component nations to pass through other countries, either members or not members of the union, on their way to and from the seat of the federal government. There is no reason why they should not occupy the same position and possess the same status as any other representatives of their country on the way to or from any international conference or congress. They are in effect ambassadors, and in all foreign countries ought to be accorded the privileges and immunities of ambassadors; and the international constitution should provide that in the territories of all component nations at least they must be so regarded.[2]

VII

Limited Life of Revenue and Commercial Measures

It is a principle of many *popular* constitutions that revenue measures must originate in the lower house

[1] See Appendix, Const'n U. N., Art. I, Sec. 6, cl. 2.
[2] See Appendix, Const'n U. N., Art. I, Sec. 6, cl. 2.

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of the legislature as most closely representing the people themselves who elect its members directly, upon the theory that the people, through their own immediate representatives, have a better right to tax themselves and a better knowledge of how and how much to burden themselves than is likely to be possessed by others.

But when this principle is applied to our international government, we are confronted by the circumstance that the members of neither house of our federal legislature need directly represent the people of any component State, but may be appointed by its government, the mode of their selection being left to the discretion of each nation. There is no reason therefore why revenue measures should originate in the one house rather than the other.

But there may be a danger in respect to such measures which it would be well to guard against, namely, the chance that such a law passed by a majority in both houses may prove later to be unjust and detrimental to one or the other of the two great interests represented respectively in the two houses of the Congress—either to the majority of the States or to the majority of the populous and influential States. Were this condition recognized before the passage of the law, it would of course be defeated in that chamber in which the interest injured by it has control.

But let us suppose that, after its adoption, it is ascertained that the measure is hurtful to one of these great interests, while correspondingly beneficial to the

other; and that the law once passed cannot be repealed save by the consent of both houses. The injustice would then be perpetuated until the consent of both houses could be obtained to the substitution of a new and juster measure. Such a condition would tend to breed ill will between the component nations, and would constitute a departure from the principles of justice and concord on which our international union should be founded.

The same principle would apply in equal degree to laws regulating or controlling international commerce.

It would seem to be a proper check upon this possible condition to insert a constitutional provision to the effect that no revenue law nor law regulating international commerce should have a life of more than (say) ten years, after which it would expire by limitation, and a new measure (or, if it be desired, the same measure) shall be passed by both houses of the Congress. Thus every ten years each of these two great interests would be given the opportunity to veto any revenue or commercial law that is proved to have operated disastrously to either.[1]

VIII

National Veto of International Legislation

The organization of the two legislative chambers, so that one represents the equal sovereignty, and the

[1] See Appendix, Const'n U. N., Art. I, Sec. 7.

other the federal populations, of the respective component nations, sufficiently guarantees the fewer more populous and influential States (the Great Powers) against a majority of the less populous, and *vice versa*.

We have now to consider the possibility of imposing an adequate check in behalf of a single nation or a small group of nations upon the legislative action of a majority in both houses,—in other words, the grant of a veto power to each component nation upon legislative action which it may deem seriously inimical to its best interests.

It may be assumed that the grant of an absolute veto as to all legislation,—even that most clearly within the constitutional powers of the international congress,—would be utterly impracticable because it would introduce anarchy and chaos into the legislative deliberations, and would effectually prevent any serious or valuable legislation.

But it by no means follows that the component nations should possess no veto power at all or that, individually, they should have no guarantee that the sovereign rights reserved by them and not granted to the international government shall be preserved inviolate. Even without a veto, it is true, they would under our proposed plan (as will appear later) have the protection afforded by the power of the international courts to declare unconstitutional and void an act of the Congress thus infringing their reserved rights; but a decree of the courts would possess only a moral sanction unless reinforced by the international power,

and this would be under the control of the Congress.

Furthermore, the same influences that would induce in the two houses of the Congress tyrannical and unconstitutional invasions of the reserved rights of a single nation or a small group of nations, would perhaps in time make themselves felt also within the judicial department of the government, which might thus be led to perpetuate the injustice.

It would be highly desirable therefore, if practicable, to devise an additional check that might be used by a component nation against tyrannical and oppressive exercise by the international legislature of usurped functions.

Such a check is found in the constitutional provision that a component nation shall have the power, under reasonable conditions of notice and time, to veto a legislative act which, in its judgment, violates the international constitution by trespassing upon the reserved rights of the nations forming the union.

But, on the other hand, to permit this veto to be absolute, without reference to the opinions and interpretations of the constitution held by perhaps the great majority of the component nations, would enable a single nation or a few nations permanently to hold up enterprises which might be of great international concern.

A fair and reasonable compromise between these conflicting policies would seem to be found in allowing the veto to each State under the conditions above mentioned, but permitting it to be overcome by such a vote

in both houses of the Congress as would suffice to amend the constitution, that is (according to the plan proposed, as will later appear) by the assent of three-fourths of all the votes of each house.

Thus if more than one-fourth of all the component States, or if States representing more than one-fourth of the entire federal populations of all the States in union, are opposed to any legislative action threatening the reserved rights of the nations, their opposition to the measure would put an absolute and irretrievable quietus upon it; but the opposition of less than that number, or of a single nation, would but serve to cause such delay as would be allowed by the constitution before a veto might be overriden by the requisite majority.[1]

IX

Power of Impeachment or Removal

Article I, Sec. 2 of the Constitution of the United States provides that the House of Representatives

> " shall have the sole power of impeachment,"

and Article I, Sec. 3, that

> " The Senate shall have the sole power to try all impeachments. When sitting for the purpose, they shall be on oath or affirmation. When the President of the United States is tried, the Chief Justice shall preside; and no person shall be con-

[1] See Appendix, Const'n U. N., Art. I, Sec. 8.

victed without the concurrence of two-thirds of the members present."

The same section also declares that—

> "Judgment in cases of impeachment shall not extend further than to removal from office, and disqualification to hold and enjoy any office of honor, trust, or profit under the United States; but the party convicted shall nevertheless be liable and subject to indictment, trial, judgment, and punishment, according to law."

Lastly, Article II, Sec. 4, of the same instrument discloses what officials of the United States are subject to the process of impeachment. It provides that—

> "The President, Vice-President, and all civil officers of the United States shall be removed from office on impeachment for, and conviction of, treason, bribery, or other high crimes and misdemeanors."

The phrase "civil officers," of course excludes military and naval officers and is not considered as embracing legislative officers, that is, the members of either house of the Congress (provision for whose expulsion from the house of which they are respectively members is elsewhere made).

Hence the officers subject to impeachment under this clause of the American Constitution are the President, the Vice-President, and all civil executive and judicial officers of the United States.

Since under that Constitution the President and

Vice-President are elected more or less indirectly by the people of the States and not by the Congress, and since they are not otherwise responsible to that body, it would seem to have been prudent to give to the legislative body this check upon the conduct of these highest executive officers. And since the inferior executive officials were to be appointed by the President and removable by him, and not by the Congress, and the judicial officials were to be likewise appointed by him and to hold office during good behavior, it is plain that the check of impeachment by the Congress would be desirable as to them too; the essential principle being that Congress ought to have the power to impeach all those officials over whose appointment and removal it would have no other control.

Applying this principle to our international constitution, since it is proposed, as will appear later, to make the executive arm of the new government fully responsive to the wishes and desires of the Congress through ministers responsible to, and selected and removable by, that body, there would seem to be no need of a process of impeachment as to any executive officers of the international government.

But in the case of judicial officers the case would be quite different. The plan proposed, as will be seen hereafter, calls for the appointment of the international judiciary by the executive authority of the several component nations, to hold office during good behavior.

It would be undesirable to leave with the component nations the right to remove the judicial officers ap-

pointed by them respectively, since that would tend to subordinate the will and opinion of the judge in the matter of the interpretation of the international constitution and laws and in other matters in which other component States might be interested to the will of the particular State appointing him, and would therefore tend to remove him from the strictly judicial and impartial atmosphere that should surround him.

On the other hand, it would be equally undesirable to leave the international judge, once appointed, without responsibility to, or check by, any other power. The judge who is guilty of extortion, bribery, corruption, or other high crime or misdemeanor ought to be removed from office. To whom can this power be intrusted more safely than to the whole body of component nations sitting in the two houses of the international congress? This would in effect require that, to remove a judge of an international court, it would be necessary to secure the consent of a majority of the more populous States in the House of Delegates, while also securing the consent of a majority of all the component States in the Senate.

As the component States themselves are represented directly in both houses, it would seem needless to provide that the proceedings for such removal originate in one of the houses and be tried out in the other, as is required in the Constitution of the United States (which declares that the House of Representatives shall have the sole power of impeachment and the Senate the sole power to try impeachments). Under the

proposed plan, the proceeding for the removal of an international judge would be the same as the procedure for the passage of a law; it might originate in either house, and if passed by that house, upon concurrence by the other, the removal would be effected.

Nor is any reason perceived why the procedure should call for more than the ordinary majority of votes in each house. The requirement in the American Constitution of a majority of two-thirds in the Senate to convict upon impeachment was made necessary because the President of the United States was made subject to the process, and to permit him to be impeached and removed from office by the vote of a bare majority in either house would have destroyed his independence as a co-ordinate department of the government and would have made his office the football of party politics. If the impeachment process had been confined to federal judges, it may well be doubted whether the framers of that instrument would have deemed it necessary to require a vote of two-thirds of the Senate to convict. Be that as it may, experience in the United States has proved that under the impeachment process the removal of a judge is so difficult as to be rarely attempted.

On the whole it is believed that better results would be attained if the removal of international judges be permitted by the concurrent action of the two houses of the Congress assented to by a majority of the votes in each house.[1]

[1] See Appendix, Const'n U. N., Art. III, Sec. 2, cl. 2.

X

Other Details of Organization

The problems above examined are the chief ones to be confronted in the organization of the legislative department of our international government.

There are of course other details to be considered, but they would appear to raise no question of important principle and, in the suggested form of the international constitution appearing in the Appendix, are adopted mainly from the corresponding details of the Constitution of the United States.[1]

[1] See Appendix, Const'n U. N., Art. I, Secs. 2, 3, 5.

CHAPTER V

POWERS TO BE CONFERRED ON THE INTERNATIONAL CONGRESS

I

Preliminary Observations

No portion of a compact for an international union can be of greater importance than the selection of the powers, especially the legislative powers, to be conferred upon the federal government. It is essential that these powers be as limited as possible in order that the nations, seeing that their sovereign powers are surrendered only to an extent necessary to abolish war among them, may the more readily assent to the compact.

But at the same time it is possible that international convenience may demand that a few other powers be also granted to the Congress, such as the power to control international coinage, currency and banking, or international copyrights and patent rights. These having little or no bearing on the causation of wars between the component nations, would have no place in our plan if we adhere strictly to the design merely to eliminate war between the nations. But it is conceiv-

able that international convenience would be subserved by placing these matters too under the control of a central legislative body rather than by leaving them as now to be regulated by mere treaty stipulations among the component nations. It would at least be worth while to consider the wisdom of including them among the powers to be granted to the Congress, and thus at one stroke achieve the permanent neutralization of them.

It may also be remarked once more, as preliminary to the discussion of the many problems involved in this great topic, that one who takes the trouble to compare the various existing constitutions of federal union will at once see that the Constitution of the United States approaches much more nearly the model we are searching for than any of the others; for at the time of its adoption the American States regarded themselves as independent and sovereign States, and were almost as jealous of their sovereign rights as the proudest European nation of today.

The consequence is that the American Constitution confers much more limited powers upon the general government than do those of other federal unions, and is correspondingly cautious as to the powers surrendered by the component States. Yet this constitution has stood the test of one hundred and twenty-five years of active operation and, with the exception of the War of 1861 (an explanation of which has already been given) has effectually prevented the occurrence of war between the States. Indeed, the question of

secession being settled, about which the War of 1861 was fought, it is difficult to conceive of another war between them, so closely and ever more closely are free trade, common interstate laws, and the ties of business and social intimacy drawing them together.

One more preliminary observation ought to be made. It is a well-established rule of construction of the United States Constitution that a power granted to the federal congress is *not exclusively* vested in that body, but may be *concurrently* exercised by the component States, except in the three following classes of cases:

1. Where it is expressly stated that Congress shall have the exclusive power to act in the matter;

2. Where the power is conferred upon the Congress, and the States are prohibited to exercise the power;

3. Where the power is of such a nature that it can only be properly exercised under one uniform rule, and the right to exercise it has been conferred upon Congress. In such case, by implication, the power is presumed to have been granted to the Congress exclusively, and the States cannot exercise it concurrently.

But when the States have the right to exercise a power concurrently with Congress, this means that they may exercise it only so long as, and to the extent that, Congress does not exercise it. For the Constitution, and laws of the United States are expressly declared to be the supreme law of the land, and a State law conflicting with a constitutional law of Congress is of no effect.

These principles are to be applied as freely in the construction of our proposed constitution as in that of the American document,—with one qualification, namely, that no opportunity ought to be permitted to the international government to assume exclusive power by *implication only,* nor on the other hand ought there to be under any circumstances a presumption of the surrender of powers by the component nations by *implication only.* In every case the claim of such a grant or such a surrender ought to be sustained only by some express provision of the international compact.

Hence, the third rule, above mentioned, for the construction of the American Constitution,—that where the power is of such a nature that it can only be properly exercised under one uniform rule, and the right to exercise it has been conferred upon Congress, the power is presumed to have been granted to the Congress *exclusively,* and the States cannot exercise it concurrently,—ought to have no place in the rules adopted for the interpretation of the international compact.

II

Power to Raise Revenue

That the international government ought to be self-sustaining, with power to raise its own revenues by its own tax measures, is a proposition needing no argument. If proof were necessary, it might be sought in the fact that all federal unions have found it essen-

tial to possess this power;—indeed, without it, the union would not be a true government, but a mere league or alliance, dependent upon the charity or liberality of the component States for its continued existence.

The constitutional history of the United States presents an actual illustration of this condition, before the establishment of the present Constitution, and while yet the States were leagued together under the Articles of Confederation which provided that the States should contribute ratably to the expenses of the Union. It was then notorious that some of the States failed utterly to pay their quotas, while others paid only part. It was, indeed, the weakness of the union under this system that finally induced the States to accede to the present Constitution.

Assuming that the Congress ought to be granted the power to raise its revenue through its own powers of taxation, the next branch of the problem relates to the sorts of tax it should be permitted to lay.

In examining this very important question, it is hardly necessary to remind the reader that the power of taxation, while it is an essential power of government, is perhaps the most dangerous of all the powers, and more liable to abuse by a dominant majority; nor does the exercise of any other demand so intimate an acquaintance with the domestic concerns and business affairs of each small portion of an extensive territory. Taxation, especially by means of duties on imports and exports, that may make for great pros-

perity in one section of such territory or in one class of the population may impoverish another, and thus may operate indirectly to make one section or one class tributary to another.

In the organization of a world government, in view of the widespread diversity of conditions among the several nations, the ignorance of the conditions in each State on the part of others than its own representatives, and perhaps even the ignorance among those representatives themselves (remembering that they would respectively represent some millions of people), it would seem the part of wisdom to confine the international taxing power within the simplest possible limits, and to permit its application to those subjects only which may be found in every State in uniform proportion.

The subject best answering this description would seem to be land. This is found in every country, and is valuable in proportion to the population and wealth of the country itself, affording thus an approximate measure of the ability of each nation to pay the expense of a world government, with its insurance against violence and war.

And while primarily this tax upon land is a tax upon the single class of landowners, the burden, extending as it would over so large a portion of the earth's surface, would speedily be distributed among all classes of the world's population. Nor would the tax thus uniformly distributed be a heavy burden upon the several nations, when we consider the annual savings in arma-

ments and equipment for war, not to mention the saving of the expense of actual warfare, resulting from the establishment of such a government.

It must also be remembered that the suggested government would be one of strictly limited powers and functions, the annual expenditures of which ought not to be great when compared with the benefits to accrue; and that the component nations, through their absolute control of their representatives in the Congress and their consequent control of the expenditures of the government, would always possess the power to put a stop to any unnecessary extravagance.

The other alternative,—that of granting to the international government the power to lay indirect taxes such as taxes on production, business, imports, or exports,—would surrender to that government an untold power for harm and injustice, and would permit a majority of the nations, through their federal agency, to meddle in the domestic concerns of the respective nations in what might prove ruinous fashion.

The plan proposed then would confine the power of the Congress to raise its revenue to the taxation of land alone at a uniform rate throughout the territories of the component nations.

The last phase of the problem relates to the proper limitations upon the purposes for which the Congress may exercise the power of taxation.

Shall it be permitted to raise money for any purposes that to it seem to be for the general international welfare, even though that welfare be confined to

improvements and public enterprises undertaken within a few only of the component States; or shall it be limited in its right to raise money to those matters, as to which it is expressly authorized to legislate?

This question has for years divided the people and the political parties of the United States. It arises under the corresponding clause of the American Constitution providing that

> "The Congress shall have power to lay and collect taxes, duties, imposts, and excises [in order] to pay the debts and provide for the common defense and general welfare of the United States."

One party has claimed that this gives Congress the power to raise money to provide for anything which it may consider as for "the general welfare of the United States," regardless of whether it falls within the granted powers and control of the federal government. The other claims that "the general welfare of the United States" has all been provided for in the powers conferred upon the federal government; that nothing beyond or outside of those powers can be properly said to pertain to "the general welfare of the United States"; and that Congress therefore has no power to raise money for other purposes than those appearing in the Constitution itself.

But whatever the proper view of such a question in the case of a single nation like the United States, it would seem very undesirable to permit the international

government to exercise any such paternal care over the interests of the component nations, which are fully able to take care of themselves and their own enterprises and improvements without aid from the rest of the world.

The powers of the international congress in this regard ought to be strictly limited to the raising of money for the sole purpose of carrying out the functions imposed upon the federal government by the constitution.[1]

III

Power to Borrow Money—Paper Currency

The Constitution of the United States has provided that the Congress shall have power

> "to borrow money on the credit of the United States."

This has been construed to mean not only that Congress may from time to time authorize the issuance and sale of bonds of the United States, but also that it may authorize the issuance of treasury notes and other paper currency as legal tender in the payment of private debts.

That the international government should be given the power to borrow money on its own credit through the issuance and sale on the public markets of bonds not intended as currency would seem indisputable. Not

[1] See Appendix, Const'n U. N., Art. I, Sec. 9, cl. 1.

only might unforeseen events occur that would render such a course necessary or else would entail great embarrassment to the government, but the widespread distribution of such bonds among the component nations would constitute a conservative influence tending to increase its political stability.

But the question becomes much more complex when we consider the express or implied grant to the international government of the power to issue a world-wide paper currency either on the sole credit of the government or through a bank or banks instituted by it. This is a matter of international convenience only, and has no special bearing on the question of war or peace; so that the grant of such a power is not in the least essential to the plan of international federation.

It is to be remembered that every unnecessary grant of power to the international government involves to a correlative extent an actual or potential surrender of power by the component nations, and tends to greater centralization of power, which, should it become too great, would defeat the very purpose of the union perhaps by causing war on the part of the component nations to regain the liberty and independence they have too rashly surrendered. These observations apply not only to the particular power now under discussion but to some others that are to be mentioned later.

While all powers ought to be surrendered by the component nations, the exercise of which by them would lead, or tend to lead, to wars between them, it cannot be fairly said that the power to issue paper

currency is one of these. The only justification of such a grant, if there be any, would be found in the international convenience resulting from the abolition of the cost of exchange and in other ways. Only experts in international finance could determine how great the advantages of this change would be, or properly weigh its financial advantages against the financial dangers incurred; but the benefits ought to be clearly shown to be very great before the power is granted.

Should the power be granted at all, it ought to be express, not left to implication from the mere power to borrow money on the credit of the United Nations. On the other hand, if it is not intended to be granted, care should be taken so to word the grant of the power to borrow as to exclude the implication that it embraces also the power to issue paper currency.[1]

IV

Power to Coin Money

The Constitution of the United States grants to the Congress the power

> "to coin money, and regulate the value thereof, and of foreign coin."

This is another instance wherein the question is presented whether a power, which has no relation to the

[1] See Appendix, Const'n U. N., Art. I, Sec. 9, cl. 2. The power to issue paper currency is placed in brackets as indicative of the doubt as to its inclusion among the powers granted.

causation of war between the component nations, ought to be granted by them to the international government, merely because it might subserve international convenience in commercial dealings or otherwise.

It is to be borne in mind that while the mere grant of such a power to the federal government would not of itself, without an express prohibition upon the States, operate as a negation of their right to exercise the same power, it would operate to give the complete control of the subject into the hands of the Congress, who might, if they should choose to do so, make their own exercise of the power exclusive, and deprive the nations of their concurrent control of it.

The same considerations that should induce caution in granting to the United Nations the power to issue paper currency apply in this case. Unless the advantages to international finance and commerce would be very great, the wisdom of augmenting the powers of the international government beyond the limits necessary to prevent war between the nations would admit of doubt.[1]

V

Power to Punish Counterfeiting

It has been assumed that the international congress would be given the power to borrow money on the

[1] See Appendix, Const'n U. N., Art. I, Sec. 9, cl. 3. The power to coin money, etc., is placed in brackets, to indicate the doubt of the propriety of its inclusion among the powers granted.

credit of the United Nations through the issuance of bonds. Perhaps also the power to issue paper currency and to coin money would be granted.

These grants would very possibly imply a power to provide for the punishment of the counterfeiting of these securities and money; but it would be wiser to leave as little as possible to implication and to grant the power expressly to the Congress.

While the component nations would also doubtless possess the power to punish the counterfeiting or utterance of counterfeited securities or currency of the United Nations on the ground of the fraud thereby worked upon their own citizens, it would be imprudent to leave the prevention and punishment of these crimes entirely to the several States, which might punish them very differently.[1]

VI

Power to Fix Standards of Weights and Measures

The remarks made in connection with the grant of the powers to issue paper currency and to coin money apply here also, and perhaps with even more force, since the benefits likely to accrue from the grant of this power to the international government would not be so great. It has no connection with war, and its admission among the powers granted could only be justified on the ground of great international conven-

[1] See Appendix, Const'n U. N., Art. I, Sec. 9, cl. 4.

ience. It is very questionable whether it should be included.[1]

VII

Power to Regulate International Commerce

Much light will be thrown upon the investigation of this interesting and important topic by a brief review not only of the corresponding clause in the American Constitution but of the interpretation given it in the United States.

That Constitution declares that Congress shall have power

> "to regulate commerce with foreign nations and among the several States, and with the Indian tribes."

This clause has received a very liberal construction, the constant tendency being to transfer to Congress the almost complete control of interstate and foreign commerce, while leaving to the States, respectively, the absolute control of all commerce conducted entirely within the limits of each State. The construction of the clause comprehends a vast field, and no more will be attempted here than to outline some of its salient features.

At first it was decided by the Supreme Court of the United States that the clause only gave to Congress

[1] See Appendix, Const'n U. N., Art. I, Sec. 9, cl. 3. This power is placed in brackets, as indicative of the doubt of the propriety of its inclusion among the powers granted.

the power *to pass laws* regulating foreign and interstate commerce, so that until Congress should act upon a particular matter connected with such commerce, the several States might pass laws dealing with it.

But in more recent times the Court has receded from this position, and has held that the purpose of the clause for the most part is to place the entire control of such commerce within the power of Congress, so that if it has not acted in respect to some particular of such commerce, it is an indication that Congress desires to leave the matter undisturbed by legal restrictions, and the States are not to regulate it.

To this general rule, however, there are important exceptions, of some of which persons extensively engaged in interstate commerce loudly complain, preferring the single regulation of the Congress or the absence of regulation to the multiform rules of the several States.

One of these exceptions is to be found in the admitted right of the respective States to exercise the so-called "police power" for the preservation of the safety, health, morals, or order of the community. Such laws are sustained even when burdensome to commerce, if their design be not to restrict or regulate interstate or foreign commerce, but *bona fide* to execute the purposes above mentioned by methods that are not unreasonable, such as quarantine regulations.

Another exception relates to the regulation of ports, harbors, and pilots. In such cases it is held that the

several States may control until Congress chooses to act, since each State is in a better position to regulate these local matters than Congress, and uniform rules covering a great extent of territory would not be likely to meet the local needs.

It is also important to observe that the term "commerce" is held not to include the manufacturing, agricultural, or mining *production* of goods, but only matters or things connected with their *distribution* and the transportation of persons.

Thus it includes immigration, and the control of Congress over that subject is based upon this clause. It also includes trade in goods by sale, barter, or exchange; the articles traded in; the rules of navigation; the highways of commerce, such as harbors, navigable waters, and interstate lines of railway or telegraph; the vehicles of commerce, as ships, railway trains, and telegraph lines; and the persons engaged in commerce such as the engineers and firemen on railway or steamship lines engaged in interstate or foreign commerce. As to all these subjects and persons, if the commerce be foreign or interstate, the States are without control and (with the exception previously alluded to) can lay no taxes or burdens upon them as such, and can make no regulations affecting commerce through them, even though the State regulations be not inconsistent with acts of Congress.

Such in brief are some of the political and economic results in the United States of the construction placed upon this constitutional provision.

In considering whether a similar power ought to be granted to the international congress, the first question would be, shall the Congress be given any control whatever over commerce? If so, it would naturally be confined to the commerce between the several component nations, and between them and nations not parties to the compact of union. Either of these would fall within the designation "international commerce." The purely domestic commerce, on the other hand, would be left under the complete control of the several constituent States.

International jealousy and suspicion would probably prove obstacles to the grant of this power to the proposed government, and doubtless certain precautions ought to be taken to define more clearly the precise limits of it than the American Constitution does. But that it would be wise, and indeed necessary, to confer a portion at least of this great power upon the international congress is sufficiently apparent, when we remember that perhaps most of the wars that have plagued mankind have had their origin in national desire to promote trade by devious paths. If, then, the chief design in establishing this union is to eliminate wars between the component nations, the compact would be irreparably defective, did it omit to extend the international power to one of the principal motives for war.

Assuming, then, that some degree of control over international commerce must be granted to the Congress, the next question is as to the limitations, if

any, which ought to be imposed upon the exercise of the power. Shall it be complete and absolute, as under the American Constitution, reserving to the component nations only the right to pass inspection or quarantine laws or other "police" regulations, and the right to regulate purely local matters such as harbors, pilots, bridges, and dams across navigable waters? If not, to what extent should it be limited?

It is clear that the power ought not to be extended so as to give the international congress control over the *production* as well as the distribution of goods, even though the goods be intended for export. Not only would such an extension increase enormously the powers of the central government, but it would constitute a direct invasion of that plenary control of affairs domestic that each nation ought to reserve to itself.

Confining ourselves therefore to the control of international *commerce* (in contradistinction to *production* of the factory, the farm, or the mine), it may be observed that in the prevailing mental attitude of the nations toward one another, it is unlikely they could be induced, even were it desirable, to grant more of this power than would permit the Congress by special and express legislation to regulate international commerce, not allowing, as in the United States, the mere silence of the Congress in respect to a given matter to operate as an inhibition upon national action.

Again, since the Congress, under the guise of regulations, might easily pass laws touching international commerce which would operate unequally and unjustly

upon different nations, thus putting one or more nations at a disadvantage in the prosecution of its trade, the compact ought to require that all regulations of such commerce passed by the Congress be uniform in their operation.

It would also seem advisable to provide, as in the case of bills for raising revenue, that no law regulating international commerce shall have a life of more than (say) ten years, so that at the end of that period, if it is to survive, it must once more run the gauntlet of both houses of the Congress and of the divergent interests represented therein.

So far from any nation being permanently injured in its trade relations by the grant of this power, thus guarded, to the international government, it is submitted that it would be a great boon to international commerce, which would prosper as never before. While the respective nations might still regulate their own trade, even international trade, conflicting and burdensome as the regulations might be, these latter could at any time be superseded as to particular matters by the action of the Congress, whenever the conflicts, restrictions, or other evils might become so burdensome as to arouse the majority of the States to action.

" Commerce," as the term has been construed in the United States, includes the control of immigration, emigration, and the migration of persons from one State to another. But it can scarcely be supposed, at this stage of international intercourse, that the several

nations composing an international union would consent to surrender the control of these subjects to the federal government. Hence a clause has been inserted expressly excepting them from inclusion in this federal power.[1]

VIII

Power to Regulate Postal and Other Communication

The Constitution of the United States grants to Congress the power

"to establish postoffices and post roads."

As construed in America, this has sufficed not only to enable the federal government to establish and control the whole postoffice system of the country, including the appointment of postmasters, but also to make appropriations of money and public lands for the building of railroads, and to declare any road it may choose, over which the mails may be carried, a "post road," and on that account more or less subject to the control of Congress.

But it has never been held that the above clause embraces telephones, telegraphs, cables, or wireless. It is confined to the single mode of communication by post. The power of Congress has nevertheless been extended to these other subjects through the extension

[1] See Appendix, Const'n U. N., Art. I, Sec. 9, cl. 5.

of the power to regulate foreign and interstate commerce. Thus Congress has the power to "establish" postoffices, while it has power to "regulate" the other modes of foreign or interstate communication.

International postal, telephonic, telegraphic, wireless, and cable communications must be considered in certain aspects as instrumentalities of war, and therefore should be under the control of the international congress.

Indeed, as agencies of international commerce, it is possible that the clause conferring upon the Congress control over that subject would suffice, by implication at least, as a grant of the power to regulate all of these modes of communication (including the postal). And the many international conventions touching these matters would seem to indicate that there is a real need for the exercise of a centralized authority over them.

When, however, we come to consider the extent of the power thus to be conferred, we are confronted with some important and difficult problems.

To make the power complete in degree, including the establishment of post, telegraph, telephone, wireless, and cable offices, and the appointment of postmasters and operators, but limiting it in kind to international communications only, leaving the intra-national communications, as now, under the control of the respective nations, would seem to involve a divided responsibility and control that would be likely to have ill results; and would enormously increase the patronage to be

bestowed by the international government. On the other hand, to make the control of the Congress over these subjects complete in kind as well as in degree, confounding the domestic with the international communications, would produce even a worse situation, and is not to be thought of.

But it would be possible to grant to the Congress the power to pass laws regulating these means of communications, so far as they are international, without giving it the power to establish or fill the offices, just as the power of the Congress of the United States to *regulate* foreign and interstate commerce has never been construed to confer upon that body the power to establish business houses and to fill them with governmental employees.

A clause therefore has been inserted in our proposed constitution granting to the Congress the power to regulate by uniform laws these means of international communication.[1]

IX

Power to Provide for International Copyrights and Patent Rights

This is another of those powers, the grant of which to the international congress is not to be justified on the ground that it would especially tend to prevent misunderstandings or wars between the component nations. If to be justified at all, it must be on the

[1] See Appendix, Const'n U. N., Art. I, Sec. 9, cl. 6.

ground of international convenience as in other instances we have seen.

It may be worth while to observe that the corresponding clause of the American Constitution has been construed not to include the power to regulate trade-marks. But under the clause giving power to regulate foreign and interstate commerce, Congress may regulate and protect trade-marks to the extent that they are used in such commerce, but not with respect to purely intra-state commerce. Doubtless, the same rule would be applied in the interpretation to be placed upon the international compact.[1]

X

Power to Constitute Inferior International Courts

One of the powers conferred upon the Congress of the United States is

> "to constitute tribunals inferior to the Supreme Court."

And the third Article of the American Constitution provides that

> "the judicial power of the United States shall be vested in one Supreme Court and in such inferior

[1] See Appendix, Const'n U. N., Art. I, Sec. 9, cl. 7. This power is placed in brackets, to indicate the doubt of the propriety of its inclusion among the powers granted.

courts as the Congress may from time to time ordain and establish."

It will be noted that these provisions do not imperatively demand that Congress create any inferior federal courts. It is given a discretion in respect to the matter, and it is conceivable that Congress might have omitted to create such courts, vesting the "judicial power of the United States," in such cases as it might determine, in the courts of the several States. Indeed, as to certain classes of cases, it has actually allowed the State courts to exercise concurrent jurisdiction with the inferior federal courts, while in other cases to which "the judicial power of the United States" extends, the inferior federal courts are given no jurisdiction at all, the State courts possessing exclusive jurisdiction with regard to them.

It is seen therefore that there is no inherent necessity to constitute any lower federal courts. Were there enough State courts, it would be possible to have left to them all the cases now tried in the inferior federal tribunals. In such event, however, appeals to the Supreme Court of the United States from the State courts would have been necessary in a large number of cases,—especially in cases arising under the Constitution, laws, or treaties of the United States, since otherwise there would result different holdings in the several States touching the construction of those laws which ought to possess a uniform meaning throughout the country.

Whether the same or a similar power should be granted to the international congress would turn upon the important point whether there need be any international courts inferior to the Supreme Court, for if they are to be created, it cannot be doubted that the constitution of them and their jurisdictions must be left to the international congress. Arguments of weight may be adduced on either side.

On the one hand, it may be urged that the establishment of inferior international courts throughout the territories of the component nations might impose a heavy expense on the federal government, as well as on litigants who might be far distant from the seat of the court,—a burden particularly heavy in criminal cases; that the exercise by such courts of jurisdiction within the limits of the several States might be regarded by them with jealous disapproval, not tending to strengthen the international government in their eyes but rather to produce friction, and that, with the judges of each nation under obligation to enforce the international constitution and the laws and treaties made in pursuance thereof, an adequate number of such judges, and appeals from their decisions to the Supreme Court of the United Nations, there would be no sufficient reason for the establishment of any inferior international courts.

On the other hand, it might be argued that it would be impracticable, without a very considerable increase of the number of courts in each State, to expect those courts to deal with the numerous cases that would be

likely to arise under the judicial power of the United Nations; that as the expense of this increase ought not to be borne by the component nations, severally, it would be a difficult matter to apportion the expense properly between the international and the national governments; that if "the judicial power of the United Nations" were left to be enforced entirely by the courts of the several nations, there would often be grave danger of lapses from the impartial and unprejudiced attitude that befits a court, since many of the cases would arise between citizens of nationalities different from that of the judge, or in the form of criminal prosecutions by the United Nations, or in the form of passing upon the validity of national acts alleged to violate the constitution, laws, or treaties of the United Nations. Such questions would often compel the national courts to choose between the national and the international law, between the rights of a fellow citizen and those of an alien or those of the international government. There would thus perhaps be a tendency to decide such questions in the interest of the State in which the court is sitting rather than to give to the national and the international law each its true weight.

On the whole it would appear wise to give to the Congress the power to constitute inferior international courts within the component States, leaving to that body the discretion to establish them or not as it may see fit, and to apportion "the judicial power of the United Nations" between them and the national courts as it may think best.

But the grant of the power to constitute these international courts is entirely distinct from the mode of selecting the judges of such courts, should they be created. The latter question properly belongs to the organization of the judiciary department, and will be discussed in that connection.[1]

XI

Power to Define and Punish Wrongs on the High Seas, and Offenses Against the Law of Nations

At present all independent nations exercise the right to punish piracies committed on the high seas and offenses against the Law of Nations. It is, indeed, a high sovereign prerogative, inasmuch as both the offenses themselves and the exercise of the jurisdiction to punish them may sometimes involve the nation in misunderstandings with other nations, or even in war.

No principle of public international law is more clearly recognized than that a nation must at all hazards protect the persons of the ambassadors accredited to it from violence or insult, and a patent failure to do so may easily lead to war.

Misunderstandings have also arisen sometimes between nations by reason of the attempt of one to punish the citizens of another for alleged crimes committed on the high seas beyond the jurisdiction of any nation.

[1] See *post*, pp. 125 *et seq.*; Appendix, Const'n U. N., Art. III, Sec. 2, cl. 1.

In view of the possibility that such questions might cause trouble not only as between the component nations themselves but as between them and nations not members of the union, it would seem eminently appropriate that the power should be conferred upon the international congress to define and punish offenses committed on the high seas and against the Law of Nations.

And since it is possible, though perhaps not probable, that troubles of this sort may also arise because of civil or private wrongs committed on the high seas outside the actual jurisdiction of any State, the power to define and redress such wrongs should likewise be granted to the Congress.

Another reason for conferring this power upon the Congress is that it is proposed (as will appear hereafter) to extend the judicial power of the United Nations to all cases of crimes and private wrongs (other than breaches of contract) arising on the high seas, and the legislative power of the United Nations ought to be equally extensive.[1]

XII

The War Powers

That the war powers of the component nations must be substantially surrendered by them severally and granted to the nations in union is the *crux* and axio-

[1] See Appendix, Const'n U. N., Art. I, Sec. 9, cl. 9.

matic foundation of the federation, the entire purpose of which would be defeated without such a grant.

It is not, however, essential to the design, nor would it be wise, that the nations surrender absolutely all right to possess and use armed forces upon occasion. Domestic insurrections or sudden invasions of their territory may occur, and it is necessary to their safety that they reserve the right to keep certain forces for these uses.

The essential point is that they surrender the right to keep more than a certain small proportion of the troops and ships of war that are in the service of the international government (say ten per centum) so that no single nation or small group even of the more powerful nations, may easily resist the international force, or be tempted by the militaristic spirit engendered by large armaments to engage in war with peaceful neighbors either within or without the union.

This surrender of great powers on the part of the component nations must necessarily suppose a corresponding guarantee of protection by the international government against invasions and aggressions of all sorts by other nations. With such a guarantee no component nation would have need of great armaments, unless it harbor illegal designs against its neighbors.

It is a wise provision of the Constitution of the United States, based upon English precedent, that appropriations for military uses shall be effective only for a limited term, thus making it necessary at short

intervals to refer to both Houses of the Congress, representing different interests, all matters relating to the size and character of the army. It is even more desirable that such a provision be included in the international constitution, since the interests represented in the two chambers of the Congress would be more divergent than in the United States; the House of Delegates representing peculiarly the Great Powers, and the Senate the equal rights of all nations.[1]

XIII

The Seat of Government

It would obviously be impracticable that the international government should have its capital and public buildings in territory subject to the jurisdiction of any of the component nations. An *imperium in imperio* of this sort would present many difficult problems. It is necessary that it possess a situs of its own, over which it shall have exclusive jurisdiction in every respect, in order that it may move freely in its appointed sphere. It may readily be assumed that any of the component nations would willingly cede to it such territory as might be needed for this purpose, the maximum amount reasonably necessary being stipulated in the compact itself.

Upon the same principle our proposed government should possess similiar jurisdiction over all land ac-

[1] See Appendix, Const'n U. N., Art. I, Sec. 9, cl. 10-15.

quired by it in the several States, with their consent, for purposes of public buildings, such as offices, arsenals, forts, dock yards, etc. If, however, the property be acquired without the consent of the States wherein the same may be, there can be no ground upon which it can be assumed that jurisdiction has been ceded to the international government, which must then be regarded as an ordinary proprietor whose land is subject to the exclusive jurisdiction of the State wherein it lies.[1]

XIV

Ancillary Powers

It would be an impossible task to foresee and enumerate all the specific powers the international congress might find occasion to exercise as incidental to the great powers granted to the federal government. The broad limits of its proper jurisdiction have been outlined in the preceding discussion, but in order to the full and complete exercise of this jurisdiction, it will be often necessary to exercise subordinate and ancillary powers. The right to do this would doubtless be implied upon the general principle of law that everything is included in a grant which is necessary to the proper enjoyment of the thing granted.

But it would probably be safer to follow the example of the American Constitution in this respect, and expressly provide for the exercise of such ancillary pow-

[1] See Appendix, Const'n U. N., Art. I, Sec. 9, cl. 16.

ers of legislation as may be found to be reasonably necessary and proper to execute the powers expressly granted to the Congress or vested in other departments of the government.[1]

XV

Power of Naturalization—Citizenship

The American Constitution, in declaring who shall be eligible to be President of the United States, or a Representative or Senator, recognizes the existence of such a legal status as that of "citizen of the United States," both native born and naturalized. Moreover, that Constitution has included among the powers granted to the Congress that of establishing "an uniform rule of naturalization"; and in the Fourteenth Amendment has declared that

> "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, shall be citizens of the United States, and of the State wherein they reside."

Indeed, all the existing federal unions recognize that there may be a citizenship of the union distinct from citizenship of the component States; that all citizens of the States are *ipso facto* citizens of the union and as such entitled to its protection against the aggressions of foreign countries wherein they may happen to be.

This is the logical consequence of the fact that one

[1] See Appendix, Const'n U. N., Art. I, Sec. 9, cl. 17.

of the chief designs of all existing federal constitutions is to weld the component States into a single nation occupying the joint territories of all the States, in which is vested the exclusive power to deal with other members of the family of nations.

The framers of the international constitution would be confronted with the like question, whether the status of "citizenship of the United Nations" shall be recognized in law, and whether the power of naturalization shall be conferred upon the Congress of the United Nations. While, under this constitution, as will presently appear, the component nations would not be expected to yield to the federal government exclusive control of all foreign relations, it is unquestionably true that they must yield all power to compel the redress of international wrongs by armed force; and in return for this concession, the federal government must guarantee protection to the citizens of each component nation while in other countries.

But all this can be accomplished without the assumption that the citizens of the component nations are also "citizens of the United Nations." Indeed, the very nature of this proposed international union is such as to forbid logically and theoretically the conception of a "citizenship" thereof. For the union would be a mere political abstraction,—a form of government resulting from a compact between nations,—possessing no territory of its own (except the seat of government and the land held by it for the purpose of public buildings). The concept of citizenship is based upon

the notion of country or territory rather than upon that of mere government or political combination. It would be absurd to speak of one as a citizen of an alliance or compact or government; one can only be a citizen of a country. A Frenchman is not a citizen of the republican form of government in France; he is a citizen of France.

The only persons therefore who may logically be termed "citizens of the United Nations" would be those who, being citizens of no other country, are born and reside permanently in the seat of the government of the United Nations, which would be subject to their exclusive jurisdiction.

It follows also that if there are to be no "citizens of the United Nations" (except in the very limited instance just mentioned), neither should any power of naturalization be conferred upon the international government.

CHAPTER VI

ORGANIZATION OF THE EXECUTIVE DEPARTMENT

I

Dependence of the Executive Upon the Legislative Department

In the examination of a proper organization of the executive department of the international government, a preliminary question presents itself whether, following our general model—the American Constitution,—the entire executive power ought to be conferred upon a single man, who in his own person shall constitute a separate and co-ordinate department of the government, entirely independent of, and without responsibility to, the Congress, or whether the exigencies of the case demand another form of organization.

In the United States the President, who is vested with practically all of the federal executive power, is chosen by an "electoral college," the members of which are selected in the several States in such manner as each State shall provide by law. The number of "electors" to which each State is entitled equals the combined number of its representatives in both houses

of the Congress. As a matter of fact, each State has now enacted that the electors to which it is entitled in the electoral college shall be elected by the people of the State, who know in advance what candidate for the presidency the electors, if chosen, will respectively vote for. The candidates themselves are nominated by national conventions of the several political parties in the country.

Thus the President is in effect elected by the States, acting through a vote of their respective peoples; and he is responsible to them alone for the proper exercise of his powers as chief executive during his term of office, which is four years. With these constitutional powers Congress cannot interfere, nor can they during his term of office either increase or diminish his salary, nor recall him nor demand his resignation. The House of Representatives may impeach him for "treason, bribery, or other high crimes and misdemeanors," but the impeachment must be tried by the Senate, of whom two-thirds must concur to secure a conviction. Beyond this, he is entirely independent of the legislative department.

This absolute independence of the executive carries with it the result that the government of the United States is not so quickly responsive to the wishes of the people as are some other forms of government. The Lower House of Congress is elected every two years, the President every four years, and the Senate every six years (though one-third of the Senate changes every two years). Hence if complete political

control has been given to one party at an election, the earliest possible time wherein the opposite party can gain complete control is four years later,—more probably, six years,—even though the political complexion of the country has changed some years earlier.

This system has its advantages, but it also has disadvantages, especially in cases in which it might be desirable that the governmental agents do not commit their constituents too far before they have had an opportunity to be heard from effectually.

Another consequence of the system is that it often happens that the executive and legislative departments are antagonistic rather than of mutual assistance. While this possesses the advantage that harmful measures are sometimes prevented, it frequently prevents also action that would be beneficial, and diminishes the power of the constituents to fix the political responsibility where it properly belongs.

Comparing this with the English and other parliamentary governments of European countries, it is seen that they possess a certain mobility and capacity for quick response to public opinion that can scarcely be said to exist in the United States. This is chiefly due to the fact that the executive power in these European systems is responsible directly to the legislative department, and is subject at any time to recall by that department through a vote of want of confidence or otherwise. The executive of the moment remains in power only so long as he retains control in the legisla-

tive halls. He must resign, failing such control, and give way to others who may command the confidence of the legislative majority.

Applying these well-known principles to the problem confronting us in the organization of an international executive, it may be observed that the mutual jealousies and suspicions of the nations, especially the Great Powers, would probably veto at once a plan similar to that adopted in the Constitution of the United States, whereby the complete control of all international executive functions would be vested in one man for a fixed term, without imposing on him any responsibility to the Congress or to the component nations.

Particularly would this result be likely to follow, should it be made possible for the chief executive to be a citizen of, or dominated by, one of the Great Powers. It would seem probable that the only condition upon which the nations might be induced to agree to such an organization of the executive would be the requirement that "the President" be always a citizen of one of the weaker Powers.

But, as applied to an international government, the disadvantages of the American system would outweigh its benefits. Most of the nations would be accustomed to a different and in many respects a more convenient system in their own governments, it would be difficult to avoid international suspicions and jealousies, and it would seem peculiarly essential in an international government, frequently called upon to deal with matters of great complexity and importance, that its or-

ganization be such as to respond quickly to the views and sentiments of the component nations.

Let us turn then to the consideration of the general principles underlying the parliamentary systems in England and other European States.

In broad outline they call for a legislative body of two chambers, the more numerous representing, and elected by, the people; the less numerous usually representing some other interest, or selected otherwise than by direct popular vote. The king, president, or other titular chief executive selects a prime minister from the members of either legislative chamber, calling upon him to choose a cabinet of ministers likewise members usually of one or the other chamber, all of whom are directly responsible to the legislative chambers, and subject to recall by them or one of them at any time. If the ministers fail to retain the support of these bodies, especially that of the chamber representing the people, they resign or are recalled, and a new ministry is created in the same manner as before.

This bare outline of the general European plan of organization of the executive department of government is necessary in order that we may see clearly what is needed for the adoption of a similar plan in the proposed international constitution.

It will be remembered that our first Article provides for a legislative department, composed of two chambers. It might be arranged that the international executive power shall be exercised by a ministry respon-

sible to, and removable by, either or both of these chambers.

We shall assume therefore for the purposes of our proposed constitution that some such form of executive organization ought to be adopted, if possible, since the existing international bureaus would be entirely inadequate both in existing powers and in modes of organization.

II

Selection of a Prime Minister

In European countries, as has been said, the prime minister is chosen by the sovereign, president, or other irresponsible head of the State. But in our federal league there would be no such authority, and it would appear unwise to attempt to create one, though he were clothed with no other important power than to select a premier upon occasion. Resort ought not to be had to such an expedient if there be a feasible way to utilize for the purpose the instrumentalities already created.

It would appear practicable to leave this function of the selection of a prime minister to the two chambers of the international congress upon nomination by a committee composed of members of both chambers; the prime minister to select his subordinate ministers, and to remove them at his pleasure; the prime minister to be subject to recall at any time upon resolution to that effect passed by either chamber; and in case of

failure to choose one of the nominees of the committee, or his resignation, or recall, another nominating committee to be selected who may nominate other persons from whom the Congress may choose a new premier.

The plan thus outlined demands further examination as to details.

III

The Nominating Committee, Its Organization and Functions

Since, under the plan suggested, this committee would exercise the function of the sovereign in some European countries, in nominating the prime minister and chief executive official of the international government for the time being, it is proper and necessary that its organization, powers, and duties be carefully worked out.

It must be remembered that the populous and wealthy nations would have a preponderating influence in the lower house of the Congress, while the sovereignty of each nation would be equally represented in the Senate, so that in that house a combination of smaller nations might predominate over a less numerous combination of powerful ones.

Hence to permit a majority of this nominating committee to be chosen by either house would tend to place the control of the executive power in the hands of the element predominating in that house. To avoid this, the nominating committee ought to be composed, in

equal numbers, of the members of each house, chosen respectively by the houses to which they belong.

The result would be, or tend to be, that no person would be nominated for the office of prime minister who would not be fairly acceptable at least to both the majority of the component nations and to the majority of the Great Powers. But to make this result even more certain it ought to be further provided that no one thus nominated shall become the prime minister unless he be elected in each house by the majority of the votes therein.

In a matter of such importance as the mode of nominating a premier and temporary executive head of the international government, it would be prudent to arrange even the details in the constitution, which should declare the number to constitute the committee, the manner of selecting its members, the number of names to be presented by it to the consideration of the Congress, and the course to be pursued in case no one of its nominees is chosen by the Congress.

With respect to the number to constitute the committee, the possibility of the selection of several delegates from the same State suggests the necessity, as a safeguard against the possible evil effects of this, that the committee be composed of sufficient numbers to minimize the importance of an accident of this kind.

As to the mode in which each house shall select its members of the committee, it is an interesting question whether they ought to be elected by ballot in each house, appointed by the presiding officer of each

house, or selected in such manner in either house as its rules may provide. Experience in legislative bodies generally as to the conduct of such matters would seem to point to the first method as preferable; but if a discretion be given to each house in respect to the matter, its own experience will in the end doubtless teach it the best method. The prudent course would seem to be to permit each house to choose its portion of this committee in such manner as may be prescribed by its rules.

With regard to the number of names to be presented by the committee from which to select the prime minister, it may be observed that time,—an important element in this matter,—would often be saved, were the committee required to present more than one name. The number has been placed tentatively at three in our proposed constitution.

Provision should also be made for the case where none of the three named by the committee receives a majority of the votes of both houses of the Congress. A question is here presented, whether the same committee should then name a second list of three or whether that committee ought to be discharged, and a new one selected representing a new group of States or at least of representatives. The latter would appear to be the better plan, since the objections to the first nominees might sometimes be not so much personal to themselves as due to the combination of interests that nominated them.[1]

[1] See Appendix, Const'n U. N., Art. II, Sec. 1, cl. 3.

IV

Who Eligible to Be a Minister

Following to its legitimate conclusion the principle adopted in the organization of the international executive department,—that it co-operate with, and be dependent upon, the legislature,—it would seem clear that the prime minister, as well as the subordinate members of the ministry, ought themselves to be members of one or the other legislative chamber.

To accept any other rule would be to adopt, in some measure at least, the weaknesses of the American system without its compensating advantages. The executive officials should occupy seats in the Congress, subject at any time to interrogation by other members of that body upon the state of international affairs.[1]

V

Selection of the Subordinate Ministers

According to the theory already outlined, the prime minister would be the responsible agent of the Congress for the administration of the executive affairs of the international government, his responsibility to either house being fixed by the power to recall him by resolution.

The question is next presented, should the other

[1] See Appendix, Const'n U. N., Art. II, Sec. 1, cl. 1.

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ministers also be appointed and removable by the legislative chambers, or by the prime minister alone?

Were the first alternative adopted, we would have authority and responsibility divided between the prime minister and other members of the cabinet. If the premier is to be held solely responsible for the entire conduct of executive affairs, his should also be the sole authority. Sound principles of government dictate that the Congress select the premier alone, holding him to a strict accountability for the selection of proper subordinate ministers and for their proper performance of the duties allotted to them.[1]

VI

The Number of Ministers

In determining the number of ministers to be in the cabinet, it would be desirable, if it were practicable, that each component nation be represented therein, while, on the other hand, no nation should be permitted to have an excess of representatives in the ministry at one time. Making due allowance for the accident that the delegation from a particular State may possess more than its fair proportion of able men peculiarly fitted for the administration of international affairs, a provision might be inserted that no component nation may have more than two representatives in the ministry at one time.

[1] See Appendix, Const'n U. N., Art. II, Sec. 1, cl. 1.

But in examining the suggestion that each nation be represented in the administration by at least one minister, several practical objections would at once present themselves.

If the number of component nations were large, such a provision might entail the creation of a ministry too unwieldy for the prompt action that would frequently be necessary. And it would often be difficult for a prime minister to find among delegations from particular States, especially minority States, men who would be in sympathy with his views and policies.

In this matter therefore it would seem necessary to rely upon the discretion of the Congress, and to provide in the constitution that the number, as well as the duties, of the ministers be regulated by law.[1]

VII

Terms of Office of Ministers

In order to insure the absolute and prompt responsibility of the prime minister to the legislature, it is essential that the Congress possess the power to recall or remove him at any time. And when we remember the two elements represented in the two chambers, respectively,—the predominance of the populous States in the House of Delegates and that of the greater number of States in the Senate,—it would seem necessary to go further and provide that he be subject to recall

[1] See Appendix, Const'n U. N., Art. II, Sec. 1, cl. 1.

or removal at any time by resolution of either chamber.

In like manner, if the prime minister is to be held responsible, perhaps removed, because of the acts or omissions of the subordinate ministers, he must be given the same right to remove them, or any of them, that is given to either house of the Congress respecting himself.

Furthermore, since the whole ministry, the premier included, are members of the Congress they would be one and all subject to recall from the Congress at any time by their respective home governments, in accordance with the laws of the several nations. Such a recall would of course terminate their offices as ministers, as they would at once cease to be members of the Congress.

Usually also a minister might be counted upon to save himself from actual removal by a timely resignation of his office; and the resignation of the prime minister would be likely to carry with it, ultimately at least, that of his entire ministry.[1]

VIII

Compensation of Ministers

The prime minister, as well as the other ministers, ought to receive not only the compensation paid to other members of the Congress, but a further stipend in recognition of the additional important and re-

[1] See Appendix, Const'n U. N., Art. II, Sec. 1, cl. 1, 2.

sponsible work they are called upon to perform as ministers.

The Constitution of the United States prescribes that the compensation of the President shall neither be increased nor diminished during the period for which he shall have been elected,—a provision necessary to secure the desired independence of the executive department and its freedom from all responsibility to the legislature.

But in our international constitution the design is just the reverse of this,—to secure a full and complete responsibility of the executive to the legislative department. Hence it would be neither necessary nor in harmony with the general plan to lay restrictions upon the Congress with regard to the compensation to be paid the ministers.[1]

IX

Distribution of Executive Powers Among the Ministers

The plan already indicated calls for the number of ministers to be determined by the Congress. But it also calls for a sole executive authority and responsibility in a prime minister. Between these two principles an important question is presented, whether the Congress or the prime minister ought to be given the power to apportion the executive functions among the ministers.

[1] See Appendix, Const'n U. N., Art. II, Sec. 2.

The principle of a sole responsibility and authority on the part of the premier in international administration would not be impaired by leaving to the Congress the apportionment of the executive duties amongst the ministers, since his authority over them is secured by his power to appoint them and to remove them at pleasure.

And since it is often essential to the success of legislation that it also include measures and instrumentalities for its proper administration, it is appropriate that the Congress be given the power not only to fix the number of ministers, but to assign to particular ministers the executive functions it is desirable for them severally to perform.

Thus in legislation touching war or commerce, the Congress would probably desire also to create portfolios in the cabinet for the proper administration of these great departments. Surely it ought not to be left to the discretion of the prime minister whether or not there shall be such ministers.[1]

[1] See Appendix, Const'n U. N., Art. II, Sec. 1, cl. 1.

CHAPTER VII

POWERS TO BE CONFERRED ON THE EXECUTIVE DEPARTMENT

I

The Pardoning Power

This power is generally recognized as a prerogative of sovereignty to be exercised by the executive department. There can be no question that, so far as offenses against the United Nations are concerned, the power to pardon them, or remit the punishment for them, together with the power to reprieve and commute sentence, should be vested in the ministry.[1]

II

The Treaty-Making Power

In all governments the treaty-making power is justly regarded as one of the highest prerogatives of sovereignty, to be exercised by the sovereign himself, or by those officials constitutionally authorized to exercise it in his stead.

[1] See Appendix, Const'n U. N., Art. II, Sec. 3, cl. 1.

But in many even of the more advanced nations it is admitted to be more or less an irresponsible power,—one that may be exercised secretly and without the knowledge of the legislative branches of the government. Indeed, the facility with which many national governments may enter into these secret agreements and understandings with each other has been one prominent cause of the mutual suspicion and distrust so prevalent among the nations of the world. It is scarcely too much to say that it is one of the indirect causes of the great European War.

The American Constitution has to a very considerable extent guarded against this evil by requiring that all treaties of the United States which may be made by the President must be ratified by two-thirds of the Senate; and while the Senate usually goes into executive or secret session for the discussion of treaties, this is merely for the purpose of insuring freedom of debate. The fact that a treaty is being considered, and the terms of it, are not kept secret.

Another valuable lesson is to be drawn from the requirement of the American Constitution that treaties shall only take effect when ratified by two-thirds of the Senate. When it is remembered that this body represents the equal sovereignty of the States, it will be seen that this constitutional provision to a considerable extent places in the hands of the States themselves the treaty-making power of the Union, the required two-thirds majority of the Senate being at least sufficient to present an effective check on any attempt

to undermine the reserved rights of the States through the agency of treaties.

It would be desirable to incorporate into our international compact a similar check upon both of these possible evils,—secret diplomacy and treaties which might affect the reserved rights of the nations. Perhaps all that would be needful for this purpose would be to require that all treaties made by the ministry should receive the assent of two-thirds of the votes in the international Senate. But to guard against the possibility of a treaty which might secure the assent of two-thirds of the Senate and yet meet with the disapproval of most of the Great Powers, it would perhaps be safer to add the requirement that treaties, to be valid, shall receive the assent of two-thirds of the votes in the House of Delegates also.

There is still another limitation that ought to be placed upon the treaty-making power,—a limitation that does not clearly appear in the American Constitution, a doubt as to the existence of which has already caused some trouble in the United States,—that is, a provision limiting the treaty-making power to those matters, control of which has been surrendered to the federal government.

For example, after limiting the powers of the international congress to the regulation of international commerce only, and excluding it from the domain of intra-national or domestic commerce, and from the right to regulate immigration, it would be highly undesirable to permit the ministry and the Congress by

treaty to regulate these matters that have been so carefully excluded from the control of the Congress as a legislative body.

The treaty-making power of the United Nations therefore ought to be confined to those subjects, the control of which has been conferred on the Congress or other departments of the international government, excluding from its operation those subjects reserved to the exclusive control of the several component nations.

This necessarily supposes that as to the latter subjects, the power to make treaties is reserved to the component nations, respectively, in all cases wherein for the proper regulation of the matter treaties are necessary either between the component nations themselves or between them and nations not members of the union.[1]

III

Appointment and Removal of Officers

The Constitution of the United States provides that the President himself shall be the commander-in-chief of the army and navy of the United States, and of the militia of the States when in the actual service of the United States; and that he shall appoint governmental officials whose appointments are not otherwise provided for, subject to the advice and consent of the Senate.

In our plan of international government, all such

[1] See Appendix, Const'n U. N., Art. II, Sec. 3, cl. 2.

offices, military, and civil, would be filled through appointments by the ministry. But it would seem unnecessary to insert the check upon such appointments that they be ratified by the Senate or the Congress, since the ministers would not, like the President of the United States, be independent of the Congress, but on the contrary directly responsible to it, through the power of recall which either house may at any time exercise.

But while the Constitution of the United States has thus given the President the power of appointment, by and with the advice and consent of the Senate, it has failed to provide expressly for the power of removal from office, otherwise than by impeachment.

For many years the question was debated, whether this power of removal was vested in the President alone or whether, like the power of appointment, it could be exercised by the President only by and with the advice and consent of the Senate. This controversy has now been settled,—temporarily at least,—by the Act of Congress of 1887, repealing the act known as the "Tenure of Office Act" of 1867, which had in effect denied to the President the power to remove public officers without the Senate's consent. The repealing act of 1887 seems practically to concede that the power of removal in such cases rests in the President alone.

In the case of our international constitution the embarrassment is to a large extent removed by the fact that it is not proposed to submit executive appointments

to the international Senate for ratification, and hence there would be no reason to suppose that removals must be submitted to their approval. But it would be more prudent to include specifically the power of removal with that of appointment as vested in the ministry alone.

Appointees may be sufficiently protected against wholesale and arbitrary removals, as upon a change of ministry, by laws of the Congress regulating the civil service.

There ought, however, to be an exception to this ministerial power of appointment in the case of clerks of court and other inferior court officers who may more fitly be appointed by the courts themselves.[1]

IV

Recognition of Ambassadors and Public Ministers

The power to receive ambassadors or other public ministers from foreign States is one of the ordinary executive functions. It embraces also the right to refuse to receive such ambassadors or ministers, either because they are *personae non gratae,* because they represent a government not recognized by the executive as a *de facto* government, or for other reasons that may be deemed sufficient. It also embraces the right to dismiss a minister or demand his recall for satis-

[1] See Appendix, Const'n U. N., Art. II, Sec. 3, cl. 3.

factory reasons. All these are important functions, relating as they do to the governmental intercourse with foreign nations.

In the United States all that has been found necessary in order to clothe the President with these powers is the simple constitutional provision that "he shall receive ambassadors and other public ministers."

In our international constitution a similar provision would doubtless suffice.[1]

V

The Execution of the Laws of the Union

This is so obviously the chief function of the executive department of every government that it is scarcely necessary to do more than mention it in the enumeration of the executive powers to be conferred on the international government.

Every declaration of war by the Congress, every law regulating international commerce, every treaty of the United Nations, and every decision of an international court not susceptible of enforcement by the court's own officials must be executed and enforced by the executive arm of the government; and every criminal prosecution must be conducted by it.[2]

[1] See Appendix, Const'n U. N., Art. II, Sec. 3, cl. 4.
[2] See Appendix, Const'n U. N., Art. II, Sec. 3, cl. 5.

VI

Official Commissions

The commissioning of officers duly appointed is an executive function which should of course pertain to the international ministry so far as relates to officials appointed by them. And since all executive officers are to be thus appointed, the power ought to be vested in them to commission such officials.

But it is otherwise, under the proposed plan, with respect to the legislative and the judicial officers of the United Nations, who are to be appointed by the component nations themselves, and who therefore ought to be commissioned as the laws of the several nations shall provide.[1]

VII

Interpellations and Interrogations

The government of the United States, by reason of its constitutional structure and the total separation of the legislative and executive departments, knows nothing of the parliamentary interpellations and interrogatories so often addressed to the ministerial benches in European parliaments. Indeed, the members of the American cabinet, that is, the heads of departments appointed by the President and, under his control, in charge of the various executive portfolios, are not even

[1] See Appendix, Const'n U. N., Art. II, Sec. 3, cl. 6.

given seats in the Congress; so that communication between these high executive officials and the lawmakers is confined to formal reports or to official testimony before Congressional committees.

The Constitution, it is true, seeks to supply the place of these interrogatories by providing that the President

> "Shall from time to time give to the Congress information of the state of the Union, and recommend to their consideration such measures as he shall judge necessary and expedient."

Accordingly, the President sends messages from time to time to the Congress, or appears before them in person and addresses them, upon these subjects. But this is a formal function, closely analogous to "the address from the throne" upon the opening of the British parliament, and is far removed, in nature and effect, from the rough and ready interrogatories addressed to ministers in European parliaments.

Under our proposed plan of international government, the analogy would be much closer to the European than to the American system. The ministers would themselves be members of the Congress, responsible to, and subject to recall by, either chamber, so that there is no need of any express constitutional provision for such interpellations, which would follow automatically from the structure of the ministry.

VIII

The Summoning and Proroguing of the Congress

In the United States, the Constitution requires that the Congress shall assemble at least once a year, though its session does not usually last throughout the year. The President is given the power

> "on extraordinary occasions to convene both houses, or either of them, and in case of disagreement between them with respect to the time of adjournment, he may adjourn them to such time as he shall think proper."

It has been assumed that the international congress would be in perpetual session, with such reasonable recesses as the two houses might agree upon.[1] This clause dispenses with the need of any special provision either for summoning or proroguing the Congress.

[1] See Appendix, Const'n U. N., Art. I, Sec. 4, cl. 2.

CHAPTER VIII

ORGANIZATION OF THE JUDICIARY DEPARTMENT

I

Appointment of International Judiciary

Assuming the necessity for the creation of an international judiciary department, the first point to engage our attention would be the proper method of appointing the judges.

The American Constitution provides that the federal judges of the United States shall be appointed by the President, by and with the advice and consent of the Senate. This involves the consequence that the federal judges are in all respects officers of the United States, not of the States, severally, wherein they perform their functions; and gives rise to that *esprit de corps* amongst them which is likely to develop where men are conscious that they are parts of one great organization.

The result has been that the federal courts from the beginning have shown perhaps too great a tendency to emphasize and enhance the powers granted to the United States at the expense of the reserved powers of

the States. Nor are the judges to be blamed for this tendency. It arises from a trait honorable to human nature, demanding loyal and faithful guardianship of the interests committed to his keeping by the agent's employer or by the organization of which he forms a part. It is then not to be wondered at that, in cases of honest doubt whether a certain power has been granted to the United States or has been reserved to the States, the tendency has been on the whole to resolve the doubt in favor of the powers of the United States. Thus, step by step, the authority of the federal government has been gradually extended, while rights once supposed by all to have been reserved to the States have been correspondingly reduced.

From this experience in the United States it seems possible to affirm the general proposition that a judiciary appointed by federal authority will demonstrate a tendency to enlarge the federal powers by judicial construction at the expense of rights reserved by the component States.

In the organization of our proposed union of nations the chances of such a tendency ought to be minimized as much as possible, for the grave danger of such a result would be a serious obstacle to its formation. The cause producing this tendency, namely, the appointment of the judges by federal authority, would, if reversed and the appointments were made by the component nations, produce more or less of an opposite tendency, constituting an additional safeguard against federal usurpation of power.

It is believed therefore that prudence would dictate that the international judges of every degree be appointed by the several component nations, acting through their executives, in accordance with a general plan that will develop as the discussion proceeds.

Practical considerations also, no less than the theoretical, demand this method of appointment, for however familiar a prime minister might be with the material of his own country suitable for international judgeships, it could hardly be supposed that he, even with the aid and advice of his council of ministers, would be in a position to make the most suitable appointments from distant parts of the world, or to learn of the comparative fitness of men of other nationalities for such important posts. Certainly these appointments might most properly be made by the executives of the States wherein the courts are to sit and perform their functions, and whose agents they are, in accordance with regulations prescribed by the laws of the several component States.

Peculiarly would this principle apply in the appointment of the judges of the international Supreme Court, upon whom would rest some of the most important duties and responsibilities involved in the administration of the international government. It is they who must decide the great controversies that would arise from time to time between the nations, who must finally pass upon the validity of the various exercises of legislative power by the international congress, and who must adjudicate cases wherein the component na-

tions shall have exercised powers alleged to be in violation of the international constitution, laws, and treaties. Surely here, if anywhere, the component nations have the most direct concern in the appointment of the strongest and most learned constitutional lawyers and statesmen to be found within their dominions.[1]

II

Independence of the Judiciary

Although, in accordance with the conclusion just reached, the international judges ought to be appointed by the executives of the component nations, it by no means follows that they ought to be paid by them also. On the contrary, it would seem eminently proper that, once appointed by the respective States, they should be paid an equal compensation out of the federal treasury. Otherwise States paying liberal salaries to their representatives on the bench, and thus securing their best men, might sometimes find their rights determined by

[1] See Appendix, Const'n U. N., Art. III, Sec. 2, cl. 1. It would not seem proper that the international compact should confer upon the executive of each component State, acting alone, the authority to appoint the international judges, since some of the nations (for example, the United States) do not permit the appointment of their own national judges or ambassadors by their executives alone, without ratification by their Senates or legislative assemblies. Hence while the proposed plan calls for the appointment of the international judges by the executive of each component State, it also provides that the appointment shall be made in accordance with such regulations as may be prescribed by the laws of each State, including a ratification by its Senate or legislative body, if a State shall see fit to require it.

the judicial representatives of other nations more niggardly in their allowances, who would be of inferior ability, learning, or character.

There ought also to be a prohibition upon the reduction of the compensation of any judge during his term of office. This is an obvious and necessary check upon the undue influence that might otherwise be brought to bear upon the judiciary by the legislative department.

As a further means of securing the independence of the judiciary, our constitution ought to contain the provision that they shall hold office during good behavior, subject to removal only by the action of the Congress, for bribery or other misfeasance.[1]

III

Inferior International Tribunals

In dealing with the powers to be conferred on the international congress, and more particularly with the grant to the Congress of the power "to constitute international courts inferior to the Supreme Court," the conclusion was reached that this power ought to be granted. But in the same connection it was pointed out that the Congress might not need to exercise it, since possibly the courts of the several nations might be deemed adequate to determine all the controversies likely to arise in inferior tribunals under the constitution, laws, and treaties of the United Nations.

[1] See Appendix, Const'n U. N., Art. III, Sec. 2, cl. 1.

Assuming, however, that it may be found necessary to create these international courts, the organization of them in detail must be left to the discretion of the Congress.[1]

IV

The International Supreme Court

It has already been indicated, both on theoretical and practical grounds, that it would be desirable that the international judges be appointed by the executives of the component nations. But in the case of the Supreme Court this would be impracticable unless each nation be given at least one representative upon that court.

1. Equality of National Representation Upon the Court

The first important question is whether this representation on the Supreme Court should be equal for all the component nations, or whether each should be represented in proportion to importance and influence, as measured by population or otherwise.

When it is remembered that the court is established for the adjudication of national rights wherein all the nations are equal; that the questions it is to decide ought not to be determined by the weight of influence and wealth, but by the weight of justice and reason

[1] See Appendix, Const'n U. N., Art. III, Secs. 1, 2.

only, in which respects the component nations are equal; that the custom of nations in arbitration proceedings has been to submit their disputes to tribunals consisting of an equal number of representatives of the contending nations (regardless of their respective influence and populations), with an impartial umpire; that the judges of the court would not be partisans chosen for the purpose of advocating and establishing certain claims, but impartial judges, independent of outside influence, and sworn to hold the scales of justice evenly balanced between the federal government and the component nations, and between the litigants before it, whether nations or individuals; that in every contest between two of the nations or between the federal government and a nation or its citizens, each of the nations, though not an actual party to the litigation, would be deeply interested in the precedents set by the decision; and that in cases involving the interpretation of the international constitution, laws, and treaties, or the constitutionality of laws or treaties of the component nations, every nation would have an interest in the decision almost equal to that of the litigants themselves;—when all these points are considered, it would seem eminently proper to adopt the principle that each component nation be equally represented upon the Supreme Court.

To the objection that a representation of one judge from each nation would make the court too large and unwieldy, it may be replied, that with the addition of each new nation to the union, the work of the court

would be increased to an amount that would surely demand the labors of one additional judge, and that even should every nation in the world join the union, there would be ample work for the forty or forty-five judges of the court to perform, divided into sections as they would be according to the plan presently to be suggested.

The real danger would be not that one representative on the court from each component nation would make the court too large, but that the number of component States might not be great enough to enable a court composed of only one such representative of each nation properly to perform its functions.

The essential principle is that all the States concerned be *equally* represented upon the court. Whether this be accomplished through the medium of one or two or more representatives of each nation is a detail depending upon the number of the component nations, and ought to be left within the discretion of the Congress.[1]

2. *Division of the Court into Sections*

The Supreme Court would be called upon to decide three classes of cases enumerated, in the order of their dignity, as follows: (1) disputes between nations; (2) civil cases involving the interpretation of the international constitution, laws, or treaties, the constitutionality of the laws or treaties of the United Nations,

[1] See Appendix, Const'n U. N., Art. III, Sec. 3, cl. 1.

or the constitutionality or validity of the laws and treaties of the component nations; and (3) criminal cases involving similar questions.

It would seem proper, therefore, to divide the court, as nearly as may be, into three equal sections;—the first section to try cases of the first order, and the second and third to try cases arising under the second and third of the above heads, respectively. The judges first to compose the several sections might be determined at the initial meeting of the court by the drawing of lots.

A second drawing of lots might determine the relative rank each judge would occupy in his section, the first in position being the presiding judge of his section, with the next in rank as his successor, the presiding judge in each section to be promoted to the last place in the section immediately above, in case of a vacancy in that section; and upon every vacancy, each judge holding rank below the vacant position to advance one degree. The presiding judge of the first section would be the chief justice of the Supreme Court.

Upon the occurrence of a vacancy in the representation of any component nation, the new appointee of that nation would begin at the lowest rank in the third section.

To illustrate: If the chief justice die, the judge in the first section who is second in rank would at once become chief justice; the third in position would become second; and so on until the last position in that section is reached, which would thus be left vacant. This

vacancy would be filled by the promotion of the presiding judge of the second section. Thereupon the second judge of the second section would become the presiding judge of that section, the third in position would become second, and so on until the last position of that section is reached, which would be vacant. This vacancy would be filled by the promotion thereto of the presiding judge of the third section, whose position in turn would be taken by the second judge of the third section, and so on until, each of the remaining judges moving up one degree, the last position of the third section is left vacant. This would be filled by the new appointee of the State, the death of whose former representative (the former chief justice, we have supposed) inaugurated the series of vacancies.

Thus no nation would be preferred over another, and the representatives of each would have an equal chance to interpret the international constitution, laws, and treaties, and to decide cases in the various forms in which they may arise in the several sections. Experience and length of service would be the sole measures of the official rank of the representatives of the several nations.[1]

3. Appeals from the Sections to the Supreme Court as a Whole

There would arise two classes of cases wherein the final decision of the questions involved ought not to be

[1] See Appendix, Const'n U. N., Art. III, Sec. 3, cl. 2, 4, 5.

left to the particular sections, but should be determined by the court as a whole, all the sections sitting together, in order to avoid a confusion that would otherwise result.

The first case is that of uncertainty whether the particular cause falls within the jurisdiction of the section to which it has been brought by the parties appealing. If the point be raised before the section that the case ought to go to another section, either party dissatisfied with the decision upon this preliminary question ought to be allowed to appeal to the court as a whole to determine the proper section in which to try the case.

The second instance is where the several sections, in adjudicating the cases of different sorts brought before them, respectively, have rendered conflicting decisions interpreting the same provisions of the international constitution, laws, or treaties, or passing upon the constitutionality or validity of the laws or treaties of the United Nations or the component States. Great confusion would result, if no means of ultimately reconciling these conflicting decisions were provided.[1]

[1] See Appendix, Const'n U. N., Art. III, Sec. 3, cl. 3.

CHAPTER IX

JURISDICTION OF THE INTERNATIONAL COURTS

I

Scope of the International Judicial Power

It is scarcely necessary to point out that it is as essential to grant judicial, as legislative and executive, powers to the international government, or to remind the reader how important is the careful selection of those powers, so that the federal government, while on the one hand clothed with all the authority needful to the successful performance of its functions, shall not on the other be in a position to invade the proper province of the several component nations.

We shall begin the study of the jurisdiction of the international courts with a brief examination of the subjects to which it would seem that the judicial power of the United Nations ought to be extended.

1. Interpretation of the Constitution, Laws, and Treaties

No argument will be needed to convince the thoughtful reader that it is essential to place in judicial hands

the power of authoritative interpretation of the international constitution, laws, and treaties, whenever such interpretation becomes necessary to the decision of a question suitable for judicial cognizance. The rights of litigants, both civil and criminal, would often turn upon the proper construction of these instruments.

To leave them entirely to the jurisdiction of the courts of the component nations would be to invite confusion and variety of interpretation. The international constitution or an act of the Congress or a treaty of the United Nations might then mean one thing in one State and a very different thing in another, with no power in any single court or system of courts to straighten out the tangle.

Again, if the proposed international constitution is to protect the citizens of one component nation against the improper acts of another State wherein such citizens may be, as is later suggested, the best and safest mode of protection would be to give such citizens the opportunity to have their rights determined by some tribunal more likely to be impartial than the courts of the nation complained of.

For these and other reasons not needful to mention, it would be imperative that our international compact provide that the judicial power of the proposed government shall extend to controversies arising under the constitution, laws, and treaties of the United Nations.[1]

[1] See Appendix, Const'n U. N., Art. III, Sec. 4, cl. 1.

2. Power to Adjudge Laws and Treaties Unconstitutional and Void

In the adjudication of the legal and constitutional rights of litigants, it would often be necessary for the court having jurisdiction of the case to compare a law of the Congress or a federal treaty with the constitution, or a law or treaty of a component nation with the international constitution or the laws or treaties made in pursuance thereof touching the same subject, and it might sometimes happen that such examination would reveal the particular law or treaty to be in contravention of a higher law.

In such an event, what should be the measure of the court's duty? Is it to accept the particular law or treaty as furnishing the rule for its guidance, on the presumption that the legislature or treaty-making power has investigated the constitutionality of its work, and act upon the theory that they, and not the court, are the proper arbiters of that question? This is the rule generally adopted in European countries, even those possessing written constitutions.

Or ought the principle to be, as in the United States, that the judiciary, as a co-ordinate department of the government, is under the duty to determine the proper law to be applied to the case before it; and that as between the constitution, which is the higher law, and the inconsistent law or treaty of the United Nations, which is the subordinate,—or as between the constitution of the United Nations or the laws or treaties of

the union made in pursuance thereof and the inconsistent law or treaty of a component nation,—it must enforce the higher, and refuse to recognize the subordinate as a valid act?

This principle, as it is theoretically applied in the United States, forbids the court to take this radical step if there is any doubt of the constitutionality of the act, upon the theory that the legislature is a co-ordinate branch of the government, and must be supposed to have at heart the preservation of the constitution, and that it would never have passed the law had it not been satisfied of its constitutionality. But this theoretical attitude has in large measure been neutralized by the practical fact that in many of its most important decisions upon constitutional questions the Supreme Court has been nearly equally divided, and has declared laws unconstitutional by bare majorities of the court. If there were ever to be a doubt as to the unconstitutionality of a law, this would seem to be the case where it is most certainly proved to exist.

No attempt will be made here to give the arguments for or against the European and American theories, respectively, on this point. Suffice it to say that it is believed on the whole that the peculiar nature of our proposed federation would make acceptable to the nations another check upon the powers of the international congress and treaty-making power, such as would be contained in the judicial power to adjudge their acts unconstitutional and void. And if,

by granting this judicial power, each nation may secure itself and its citizens against similar unconstitutional laws and treaties made by its sister nations, it ought to be willing, in its turn, to permit its own laws and treaties to be examined in the same way and with the same authority.

Hence, in our proposed constitution, it is assumed that the nations would consent to grant to the judiciary department the power, in cases where such a course would be necessary, to declare unconstitutional and void any law or treaty of the United Nations which clearly violates any provision of the international constitution, or any law or treaty of a component nation in contravention of the constitution or of the constitutional laws or treaties of the United Nations.

But, profiting by the experience in the United States above referred to, a proviso should be added that when such a case is before the Supreme Court, it shall not pronounce any law or treaty unconstitutional and void unless three-fourths of the judges agree to it. The majority of three-fourths is selected, because it is that majority of the two houses of the Congress that would be necessary in order to change the constitution, or override the court's decision. It should take as large a majority of the court to override the decision by the Congress that its action is constitutional, as it would of the Congress to override the decision of the court and amend the constitution. In the one case the component nations are acting through the judicial,

in the other through the legislative, organ of the international body.[1]

3. *Check Upon the Judicial Power to Declare Laws Unconstitutional*

As the principle is applied in the United States, no check is found upon the power of the Supreme Court to declare a law unconstitutional and void save in the power to amend the Constitution, and thus override, as it were, the court's decision. Indeed, the constitutional history of the United States, reveals at least one case wherein this very consequence followed. In the great case of *Chisholm v. Georgia* the Supreme Court decided that under the Constitution a private citizen of one State might sue another State in the federal courts. No sooner was the decision announced than a great outcry arose throughout the country against such an interpretation of the Constitution, and the decision was speedily followed by the adoption of the Eleventh Amendment to the Constitution declaring that

> "The judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by citizens of another State, or by citizens or subjects of any foreign State."

But under the American Constitution it is exceedingly difficult to obtain amendments, so that the evil

[1] See Appendix, Const'n U. N., Art. III, Sec. 4, cl. 1.

must be a very pronounced one before it is likely to be remedied in this manner.

Under our international constitution, as herein proposed, amendments may be had by a three-fourths vote in each house of the Congress. If therefore the Supreme Court should at any time declare an act of the Congress unconstitutional, and that opinion is dissented from by a sufficient number of the component nations, it would be a comparatively easy matter to secure an amendment to the constitution that would correct the error made by the court. To this end the assent of at least three-fourths of the States, as represented in each house of the Congress, must be secured.

4. Cases Affecting Ambassadors, Public Ministers, and Consuls

Under existing international conditions so great is the danger of ill feeling, or even war, resulting from an affront offered to the public representative of another nation, that it is manifestly proper that the judicial power of the international government be extended to all cases affecting them. Otherwise it would be easily possible for the union to become involved in war or at least in trouble with nations not members of it by reason of the improper or illegal determination of a case affecting such representatives by a court of one of the component nations.

For somewhat similar reasons this power should be extended also to cases affecting ambassadors, public

ministers, and consuls accredited to any of the component nations by other nations, whether members or not members of the union. Since (as we have supposed) the war power has been surrendered by the members of the union and granted by them to the international government, it devolves upon the latter to see that, as between the component nations, their ambassadors are not subjected to affront or injury, and that, as between these and nations not members of the union, the peace of all be not jeopardized by the misconduct or bad management of one of their own number. These results may be best accomplished by extending to all such cases the international judicial power.[1]

5. *Offenses and Wrongs Committed on the High Seas*

The Constitution of the United States extends the federal judicial power, *inter alia,*

> "to all cases of admiralty and maritime jurisdiction."

The jurisdiction of the English admiralty courts, to which this clause refers, was threefold (exclusive of the jurisdiction of prize cases in time of war under the rules of international law). This threefold jurisdiction consisted of the powers following:

1. To try and sentence persons accused of crimes committed on the high seas or on navigable waters

[1] See Appendix, Const'n U. N., Art. III, Sec. 4, cl. 2.

wherein the tide ebbs and flows, if not within the body of any county;

2. To try all cases of "maritime torts," that is, private wrongs (other than breaches of contract) arising upon the high seas or upon tidal waters, whether or not within the body of a county;

3. To try cases of "maritime contracts," that is, contracts wherever made, if concerning maritime affairs.

In the United States an Act of Congress has provided that jurisdiction of crimes in admiralty shall extend to crimes committed on the high seas or on navigable waters not within the body of any State; leaving crimes committed within a State, though on navigable waters, to be punished by the State courts.

With respect to "maritime torts," it has been decided in the United States that the admiralty jurisdiction is even more extensive than in England, because of the greatness of the American rivers, many of which are readily navigable far above tide water. Hence the rule has been established that the admiralty has jurisdiction of torts committed on the high seas or on any waters navigable in fact by ships that may be used in commerce, regardless of the ebb and flow of the tide.

The third subject of admiralty jurisdiction remains in the United States, as in England, dependent upon the nature of the contract, not upon the locality.

The question now presents itself whether the judicial power of the United Nations ought to be extended to these cases and, if so, within what limits.

Following the general principle that matters of local concern shall be left entirely to the regulation of the component nations, and only matters of common interest, the regulation of which by the several component nations might engender misunderstandings or ill will, shall be given into the control of the international government, it would result that at least those parts of the admiralty jurisdiction above described, which involve the occurrence of events upon navigable waters within the territorial boundaries of a particular nation, should remain as now subject to the exclusive jurisdiction of that nation.

The application of this principle would eliminate from international cognizance all crimes and torts committed on navigable waters within the limits of any nation, and all cases of maritime contract, while it would extend that cognizance to offenses and torts (or private wrongs other than breaches of contract) committed on the high seas.[1]

6. The United Nations a Party

Controversies would often arise to which the United Nations would be party,—such as prosecutions of individuals for violations of the laws of the union, suits by the United Nations against component nations or other proceedings wherein they might be complainants. To all such cases the international judicial power ought certainly to be extended.

[1] See Appendix, Const'n U. N., Art. III, Sec. 4, cl. 3.

It would seem equally clear, if the principle of the judicial settlement of international disputes is to prevail, that the judicial power of the United Nations ought to extend to all suits *against* the United Nations in which component nations or nations not members of the union are the complainants.

But it does not necessarily follow that the international courts should be given jurisdiction of suits instituted against the United Nations by private individuals. Here is to be applied that principle of government demanding that no sovereign be sued even in his own courts without his consent. In such cases, therefore, while the judicial power of the United Nations should be extended to such cases, it must be left to the discretion of the Congress to determine whether, and to what extent, the power shall be exercised.[1]

7. *Controversies Between Component Nations*

There is no need to tarry upon the grant of this power. It is obviously essential that the international judicial power extend to cases of this sort, if the chief purpose of the union is to be carried out,—the avoidance of war between the component nations.[2]

[1] See Appendix, Const'n U. N., Art. III, Sec. 4, cl. 4.
[2] See Appendix, Const'n U. N., Art. III, Sec. 4, cl. 5.

8. Controversies Between Component and Other Nations

The same reasons that necessitate the extension of the international judicial power to controversies between the component nations themselves would demand its further extension to controversies between component nations on the one side and nations not members of the union on the other.[1]

9. Controversies Between Nations Not Members of the Union

All existing federations have provided for the extension of their judicial power to controversies between their component States, or between those States and foreign nations. But they have all stopped at that point. Not one has undertaken, in an altruistic spirit and in the interest of general peace, to place its courts at the disposal of two or more nations not within the union for the judicial settlement of their disputes. Indeed, in the case of an ordinary federation, such a proposal would appear preposterous and ridiculous.

But in the case of a federal union such as we are examining, established, if it is to exist at all, by the most powerful nations of the world, for the very purpose of keeping the peace between them, which might be jeopardized by a local war in a distant part of the

[1] See Appendix, Const'n U. N., Art. III, Sec. 4, cl. 6.

earth, it is at least debatable whether the international constitution should not offer the services of its Supreme Court for the judicial settlement of disputes between nations not members of the union, thus giving them the benefit of an impartial court already organized and accustomed to hear such causes, whose arbitrament might prove an acceptable substitute for that of a war the final outcome of which upon the peace of the component nations no man might foresee.

If, however, such a provision were inserted, care ought to be taken to declare expressly that the submission by outside nations of their controversies to the international courts shall furnish no reason or excuse for the use of the international force to execute the courts' decree. That must be left to the honor of the nations concerned, or else the entire purpose of the clause is defeated.[1]

10. Controversies Between Citizens of Different States

The Constitution of the United States extends the judicial power of the Union to cases arising between citizens of different States or between citizens of a State and aliens.

The power was extended to these cases upon the theory that the courts of a particular State would not be so likely as would the federal courts to adjudge

[1] See Appendix, Const'n U. N., Art. III, Sec. 4, cl. 7.

impartially the rights of its own citizens when weighed against those of aliens or the citizens of other States. But Congress has never adopted this theory to the extent of making the federal jurisdiction exclusive of the State courts in such cases. Under the Act of Congress, if the amount in controversy exceeds $3,000, the suit may be brought in, or removed to, the federal court, but it may also be tried in the State court if neither party objects. If the amount involved be less than $3,000, the federal courts are given no jurisdiction at all.

This last condition is in itself an admission by Congress that there is nothing to fear from the injustice, prejudice, or partiality of the State courts in cases of this character. And experience in the United States points to the same conclusion. In the vast number of such controversies that have not involved $3,000, and have therefore been left entirely to the disposal of the State courts, their decisions have been as satisfactory to the litigants, whether citizens or aliens, as the decisions of the federal courts have been. There has been little evidence of the local partiality and prejudice, the fear of which led to the extension of the federal judicial power to those cases.

On the other hand, the possession of this jurisdiction (where the amount is more than $3,000) has enormously augmented the business of the federal courts in the United States; and, more serious still, has given those courts increased opportunity, sometimes availed of, to advance the power and prestige of the federal

government at the expense of the powers reserved to the States.

In the international constitution,[1] as will appear later, the rights of aliens or of citizens of one component State, while in another, are adequately secured against invasion, and whenever a suit involves the law of a component nation alleged to violate these rights, it would constitute "a controversy arising under the constitution of the United Nations," to which the international judicial power would extend. It would seem unnecessary and unwise to extend it further to controversies between citizens of different States or aliens, merely because the parties are of different nationalities, where no unfair or prejudicial governmental action has been alleged.

For these reasons it is believed that the international judicial power ought not to extend to any litigation between private parties, except in cases arising under the constitution and laws of the United Nations or under treaties made by their authority or by authority of the several component nations.

II

Original Jurisdiction of the Supreme Court

By "original" jurisdiction is meant that the court has jurisdiction to try the case immediately and in the first instance, without the previous institution of any

[1] See Appendix, Const'n U. N., Art. VI, Sec. 1.

suit in an inferior court. The term is used in contradistinction to "appellate" jurisdiction, which supposes a suit first instituted in a lower court, and then brought to the higher court upon appeal.

Our exemplar, the Constitution of the United States, upon this point has provided as follows:

> "In all cases affecting ambassadors, other public ministers and consuls, and those in which a State shall be party, the Supreme Court shall have original jurisdiction. In all other cases before mentioned the Supreme Court shall have appellate jurisdiction both as to law and fact, with such exceptions and under such regulations as the Congress shall make."

In the United States it is settled that the original jurisdiction of the Supreme Court, having been conferred by the Constitution itself, can neither be enlarged nor diminished by the action of Congress. But while the Constitution has given the court original jurisdiction in the cases mentioned, it has not declared that jurisdiction to be also exclusive; and hence it is competent for Congress to enact that suits of this kind may be originally instituted in a lower court as well as in the Supreme Court.

The reasons for granting the court original jurisdiction in these cases is quite apparent. Reference has already been made to the jealousy with which nations are accustomed to regard the treatment of their diplomatic representatives abroad. Their relations to the

people around them are to a great extent regulated by the Law of Nations, and they are not ordinarily subject to local jurisdiction. It is not only essential that, as between the federal government and the component States, the protection of these foreign representatives should belong to the former, but in the exercise of the judicial power of the federal government in cases affecting them it is important that such cases may be at once instituted in the highest and most responsible federal court rather than drag through the tedious processes of the lower courts, reaching the Supreme Court only on appeal.

Analogous reasons led to the inclusion within this original jurisdiction of controversies "in which a State shall be party." Not only the dignity of the State, but the prevention of tedious and exasperating delays and other grounds for the development of ill-will between the States, dictated that such controversies be instituted originally and in the first instance in the Supreme Court.

In the case of the international constitution these reasons would be no less effectual than in the American Constitution. No less in the former than in the latter case would the necessity arise to avoid or promptly redress affronts to ambassadors or ministers accredited to the United Nations or to any component nation, and to consult the dignity and convenience of the component or other nations litigating their rights in the international courts.[1]

[1] See Appendix, Const'n U. N., Art. III, Sec. 5, cl. 1.

III

Appellate Jurisdiction of the Supreme Court

Unlike the Supreme Court's "original" jurisdiction, it is neither necessary nor desirable that its "appellate" jurisdiction be fixed in the international constitution. It ought to be left entirely to the discretion of the Congress.

The constitution, following its American prototype, should do no more than provide that the court shall possess such appellate jurisdiction from inferior international courts, and from the courts of the component nations when exercising the judicial power of the United Nations, both as to law and fact, as the Congress shall think proper.[1]

IV

Limitations Upon the International Judicial Power

Before concluding our examination of the judicial power that ought to be conferred on the international government, it is necessary to call the reader's attention to several important limitations that should be imposed upon the exercise of it.

[1] See Appendix, Const'n U. N., Art. III, Sec. 5, cl. 2.

1. Suits by Individuals Against Component Nations

Allusion has already been made to the governmental principle that no sovereign State may be sued without its own consent. Nations might be willing to surrender to an international federal government the judicial power to determine controversies between themselves and other nations as a means of avoiding war, and yet may properly refuse to yield to a quasi-alien authority the power to determine suits instituted against them by private individuals without their assent. To permit this would be to impair their dignity as sovereigns without adequate reason.

But this principle would not apply to appeals taken to the Supreme Court from inferior courts in suits, civil or criminal, instituted originally by a component nation against an individual, where the decision in the lower court has been against the individual (he being accordingly the appellant and the nation the appellee) and the individual's rights or immunities under the international constitution, laws, or treaties are involved.

Hence there ought to be a provision in our constitution to the effect that the judicial power of the United Nations shall not be construed to extend to any *original* suit brought by a private person against a component nation.[1]

[1] See Appendix, Const'n U. N., Art. III, Sec. 6.

2. *Suits Against the Sovereign, Chief Executive, or Ministers of a Component Nation*

It is certain that no nation would give its assent to a compact which did not clearly provide against the possibility of any action of the international federal government whereby its sovereign, president, or other chief executive, or the members of its ministry, could be brought before the international courts on charges of the violation of the federal laws or treaties. No nation would put itself in a position where such affronts to its sovereignty and dignity would be possible, or where such foreign influences could be brought to bear upon its governmental policies.

There must be inserted therefore in the proposed constitution still another limitation upon the international judicial power to the effect that it shall not extend to any personal proceeding against the sovereign, chief executive, or any member of the ministry of any component nation.[1]

[1] See Appendix, Const'n U. N., Art. III, Sec. 6.

CHAPTER X

LIMITATIONS UPON THE POWERS OF THE UNITED NATIONS—(I) POLITICAL LIMITATIONS

I

Preliminary Observations

As preliminary to an examination of the limitations that ought to be imposed upon the international government, it is proper to observe that the corresponding limitations upon the federal government of the United States, contained in the American Constitution, so completely and so effectually cover the ground,—especially in respect to the guarantees and protection they afford to the rights of the individual against the encroachments of the government in the exercise of its granted powers,—that they need but few modifications or additions to suit them to our purposes.

It may also be observed that so far as concerns the guarantees of the individual's civil rights, and the protection afforded him in criminal prosecutions, by the international constitution, no nation would be likely to raise serious objection to its adoption on account of their presence, since the tendency and effect of all of

them would be to protect the citizens of each nation from unjust, oppressive, or tyrannical action on the part of the international government alone, and would not in the slightest degree affect the exercise of their customary rights by the governments of the several component nations within their own limits.

The limitations to be considered may be best classified under three heads: (1) Limitations of a political nature; (2) Guarantees of the individual's civil rights, and (3) Guarantees of the individual's rights in criminal cases. The present chapter will be devoted to the political limitations upon the powers of the international government.

II

Territorial Acquisitions

Inasmuch as the national craving for territorial expansion is one of the most pronounced causes of war, it would be anomalous to establish a federal union of nations with the purpose of preserving the peace of the world, and yet grant to that international government the power to acquire territory, thus inviting the control of it by the very passions and temptations, an escape from which is the reason for its establishment.

Yet this government must be given the power to declare and wage war if necessary with nations not members of the union; and this cannot be accomplished

without invading and occupying, temporarily at least, the territory of the enemy. Sometimes also the fundamental cause of the war may lie in the fact that territory thus occupied has been in the possession of the wrong nation from the racial, political, geographical, or religious point of view, so that to insure future peace it may become necessary to unite the conquered territory to some other nation better fitted in these respects to govern it; or it may be found advisable to establish it as an independent State.

But whether such occupied territory be returned after the war to the nation from which it has been taken, or be surrendered to one or more of the component nations or to a nation not a member of the union, or be raised to the dignity of an independent State, in no event ought the principle to be admitted that the international government itself shall retain control of the territory.

Moreover, the possibility of the surrender of such conquered territory to one or more of the component nations after a war, unless carefully safeguarded, might itself tend to encourage war in two ways:—either, first, by inciting some of the component nations to try to involve the international government in war, with the hope that they themselves may ultimately obtain some of the conquered territory; or, second, by arousing jealousies and suspicions among the component nations in the division of the spoils.

It is possible to avoid both of these dangers by providing that in all cases the conquered territory shall

be restored to the nation from which it has during the war been taken, unless a certain large majority of the nations, as represented in each house of the Congress, shall agree in assigning it to one or more of themselves, or to a nation not a member of the union, or in erecting it into an independent State. It may be safely assumed that should three-fourths of the Congress (the majority needed to amend the constitution) be required to agree upon one of these destinations, the temptation would be lacking to particular nations to bring on war for the possession of such territory, and should the allotment thereof to a component nation become an accomplished fact, it would then leave behind it no serious sting of distrust or jealousy.[1]

III

"Citizenship of the United Nations"

In dealing with the powers to be granted to the international congress, the power to make rules touching naturalization was considered, and the conclusion reached that the power ought to be denied because theoretically and practically it would be unwise to recognize the existence of such a legal status as that of a "citizenship of the United Nations." It is unnecessary to repeat that discussion.

Indeed, so far should the constitution be from recognizing such a status that it ought expressly to disclaim

[1] See Appendix, Const'n U. N., Art. IV, Sec. 1, cl. 1.

the existence of it, except in the case of persons born or permanently resident in the seat of government.[1]

IV

"Treason Against the United Nations"

A corollary of the proposition just presented,—that there is no such general legal conception as that of "citizenship of the United Nations,"—is that there could be no such general crime as "treason against the United Nations," for treason is peculiarly a crime growing out of and connected with the relation of citizenship.

No citizen of a component nation would owe allegiance to the government of the United Nations except by and through the adhesion of his nation to that government which becomes part of his national government by virtue of that adhesion. His levying of war against the international government, or his attempt to subvert it, would be treason against his national government and punishable by it.[2]

V

Power of Taxation

It will be remembered that the first power granted to the international congress in our proposed constitu-

[1] See Appendix, Const'n U. N., Art. IV, Sec. 1, cl. 2.
[2] See Appendix, Const'n U. N., Art. IV, Sec. 1, cl. 3.

tion is that of laying and collecting taxes upon land for purposes of revenue.[1]

In our examination of that grant of power, it was pointed out that the extension of the taxing power to the laying of duties on imports or exports, or upon business, trade or occupations of any kind, would place a most dangerous power in the hands of the international government, in case a majority of the component nations were disposed to use it to the injury of a minority;—a power, the exercise of which might cause suspicion and ill feeling between the nations instead of the confidence and good will it is desirable to cultivate. There is no easier way to enact preferential legislation in favor of particular classes or sections than through the exercise of the taxing power, especially through tariff and excise laws.

The express grant to the Congress of the power to tax land, accompanied by silence with respect to other forms of taxation, in the case of a government of enumerated powers like the one we are considering, might very possibly carry a sufficient implication that other forms of taxation are inadmissible. But in a matter of such first rate importance, it would be imprudent to leave the question to be determined by implications.[2]

[1] See Appendix, Const'n U. N., Art. I, Sec. 9, cl. 1.
[2] See Appendix, Const'n U. N., Art. IV, Sec. 1, cl. 4.

VI

Appropriations of Public Money

The next of these political limitations upon the powers of the international government, suggested by considerations of ordinary business and governmental precaution, is to the effect that no money be drawn from the treasury but in consequence of appropriations made by law; and that statements of all public receipts and expenditures be published from time to time.[1]

VII

Purposes of Appropriations—Bounties and Pensions

In dealing with the purposes for which the international congress should be permitted to raise revenue by taxation upon land, the conclusion was reached that the constitution ought clearly to provide that it be confined to those purposes for which the union is to be formed.

The same principle, of course, should apply to the appropriations of the public money after it has been raised by taxation; and it is so provided in the clause of our tentative constitution referred to below.[2]

Allusion has already been made to the necessity of

[1] See Appendix, Const'n U. N., Art. IV, Sec. 1, cl. 5.
[2] See Appendix, Const'n U. N., Art. IV, Sec. 1, cl. 6.

depriving the Congress of the power unduly to discriminate for or against the trade and occupations of particular nations through tariff or excise legislation. But this would be of little use, if the Congress be allowed to reverse the process, and by bounty legislation encourage unduly the trade of particular nations. It is as necessary to prohibit the Congress to legislate for or against trade in this form as under the guise of taxation.

But there is one sort of bounty legislation not subject to these objections, namely, laws providing for pensions to superannuated or disabled public servants, civil and military. The power to legislate on this subject should be left to the discretion of the Congress.[1]

VIII

Commercial Preferences as Between the Component Nations

It has before been pointed out that in order to accomplish the end aimed at by our international compact,—the preservation of peace between the component nations,—it is essential that the power to regulate international commerce be granted to the federal government, and accordingly this is one of the powers granted to the Congress in our constitution.

But instead of preserving peace, it would hasten war between the nations if it were possible for a combina-

[1] See Appendix, Const'n U. N., Art. IV, Sec. 1, cl. 6.

tion of them, by obtaining control in both houses of the Congress, to use that power for the purpose of discriminating in commercial regulations in favor of their own trade and against that of the minority. It is as necessary to the peace of the nations to guard against such preferential legislation as it is, in the first instance, to grant to the Congress the power to regulate such commerce.

The most usual instrumentalities for the accomplishment of this sort of preferential legislation are the governmental powers to impose taxes,—especially import and excise duties,—and to grant bounties. These powers, as we have just seen, have been denied absolutely to the international government by our proposed constitution.

It remains to impose such direct limitations upon the power to regulate international commerce as may in like manner prevent serious discriminations for or against particular nations by means of the exercise of it. With the powers to tax trade and grant bounties eliminated, it would seem that the principal other methods whereby the international government might effect discriminations of this sort would be by means of regulations giving preferences to the ports or trading centers, to the ships or other vehicles of commerce, to the navigable waters or other highways of commerce, or to the persons engaged in international commerce, belonging to one nation over those belonging to another.

For example, by harbor, pilotage, or lighthouse regulations it might be possible to discriminate in favor

of or against the ports and trading centers of a particular nation; by clearance regulations, by laws regulating the wages or qualifications of seamen engaged in international commerce, or by laws regulating the construction or equipment of ships or railroad cars, real advantages or disadvantages may be created with respect to the trade of particular nations; and the same result might be accomplished by the appropriations of money for the deepening of the navigable waters or improvement of commercial routes in one or a few countries, while denying such advantages to others.

Of course absolute equality in the operation of commercial regulations is not to be expected, and the mere fact that a law does not operate everywhere with entire equality and uniformity is no reason for declaring it preferential.

But this is not to say that a regulation of commerce, the very design and purpose of which is to create preferences, may be justly supported as constitutional; and *glaring* inequalities and lack of uniformity in its operation may well be taken as indications that the law is designed to be a preferential regulation.[1]

IX

Titles of Nobility and Privileged Orders

In view of the fact that our proposed government is one of enumerated powers, among which has not

[1] See Appendix, Const'n U. N., Art. IV, Sec. 1, cl. 7.

been included the power to grant titles of nobility or establish privileged orders, it might perhaps be regarded as unnecessary expressly to negative the existence of such a power.

That the power ought not to be granted to the international government is very evident. Not only would it be of no assistance in furthering the purpose of the union,—the prevention of war between the component nations,—but it would have the opposite tendency of exciting discord and jealousies amongst them. Indeed, the existence of such a power might of itself suffice to prevent some republics from joining the union. It might even have a like effect upon some monarchies which might fear the establishment of orders superior to their own.

Nor must it be forgotten that the proposed government, while some of its component States would be monarchies, would yet itself be in essence republican in form, a republic of nations,—so that the creation of such orders would be inconsistent as well as inappropriate.

It would appear the safer course not to trust to the presumption, arising from the absence of a grant, that the power does not exist, but expressly to deny its existence.[1]

[1] See Appendix, Const'n U. N., Art. IV, Sec. 1, cl. 8.

X

Grants of Titles or Emoluments by Other States

Another precautionary limitation upon the powers of the officials of the international government, upon which comment seems needless, appears in our proposed constitution in the following form:

> "No person, while holding any office of profit or trust under the United Nations, shall, without the consent of the Congress, accept of any present, emolument, office, or title of any kind whatever from any king, ruler, or State." [1]

[1] See Appendix, Const'n U. N., Art. IV, Sec. 1, cl. 9.

CHAPTER XI

LIMITATIONS UPON THE POWERS OF THE UNITED NATIONS—(II) GUARANTEES OF THE CIVIL RIGHTS OF THE INDIVIDUAL

I

Prompt Discharge from Illegal Imprisonment

The Constitution of the United States declares that

> "The privilege of the writ of *habeas corpus* shall not be suspended, unless when in cases of rebellion or invasion the public safety may require it."

The writ of *habeas corpus* is a technical remedy for the violation of the constitutional right of the individual to personal liberty, and is well known to the English and American law. It is a proceeding whereby a person confined may have an immediate judicial inquiry into the legality of his imprisonment, and if it be found illegal, he is entitled to an order of the court that he be at once released. Upon this writ there can usually be no investigation of the justice of the imprisonment, that is, of the prisoner's guilt or innocence

of the offense charged, but only of the legality of the confinement.

This right is recognized also in other than English-speaking nations, but not under the technical designation of the right to a *habeas corpus,* and in some countries it is not recognized at all.

Not even the last mentioned nations, however, could have any just ground of objection to our proposed constitution, should it contain a clause guaranteeing this right to its citizens as against illegal arrests made by the government of the United Nations. The clause would in no way operate to limit the powers of any national government.

But the non-existence of such a right in some countries and the designation of it by different names in others, demands that the privilege be defined in the international constitution as well as secured thereby.[1]

In defining it, our constitution would limit its application to illegal imprisonments occuring under or by authority of the international government, real, or pretended, or contrary to the international laws or treaties, or because of the alleged exercise of a right or omission of a duty claimed to exist under the constitution, laws, or treaties of the United Nations, or contrary to the Law of Nations. It is not to be extended to illegal imprisonments of other sorts.

Having defined the right, it may be secured in much the same words as those of the American Constitution.[2]

[1] See Appendix, Const'n U. N., Art. IV, Sec. 2, cl. 1.
[2] See Appendix, Const'n U. N., Art. IV, Sec. 2, cl. 1.

II

Religious Liberty

It is needless to argue the importance of a clause limiting the power of the international government to infringe in any way the religious liberty of the individual.

In this, as in many of these guarantees, the proposed constitution has followed in the main the language of the corresponding provisions of the Constitution of the United States, which in a period of more than a century have proved entirely effectual to safeguard these rights against governmental invasion.[1]

III

Freedom of Speech and of the Press

The nations differ widely in their conceptions of the extent to which freedom of speech, oral or written, may justly be accorded to individuals. In some countries the censorship of writings, in advance of publication, is a recognized right of the government, and the publication of matter reflecting upon the rulers may be punished as *lése majestè*. In others, as in England and the United States, except in times of war, censorship in advance of publication is unknown; criticism of officials or candidates for office, if *bona fide* and

[1] See Appendix, Const'n U. N., Art. IV, Sec. 2, cl. 2.

not malicious, are privileged communications and go unpunished, even though untrue; and the speaker, writer, or publisher is in no case punishable otherwise than under the common law.

Hence, should our proposed constitution merely prohibit any law abridging freedom of speech and of the press, the question would at once present itself as to what is meant by these phrases. They would mean one thing in one country and a different thing elsewhere. It is necessary therefore to define them.

One mode of defining them would be to adopt arbitrarily the legal principles, prevalent in a single country touching the subject, and use those as the standard of freedom in these respects. But if a low standard were adopted this would certainly be unsatisfactory in those countries possessing higher standards of such freedom; and if a high standard were adopted, it would be likely to cause trouble in those countries wherein lower standards are enforced.

Perhaps at once the most natural and the most satisfactory standard of freedom of speech for the international constitution is to be found in accepting for each separate nation the standard it recognizes in its own dealings with its citizens.

Hence, the limitation, as it appears in our proposed constitution, is in effect that no law shall be passed by the Congress abridging freedom of speech or of the press in any of the component States to a greater extent than as the laws of each State permit.[1]

[1] See Appendix, Const'n U. N., Art. IV, Sec. 2. cl. 3.

IV

Rights of Assembly and Petition

Two civil rights that ought to be protected from infringement by the *international* government,—whatever the view any particular national government may take of them,—are the rights of the people, first, peaceably to assemble for any lawful purpose, whether religious, charitable, educational, social, or political, provided only that the assembly be peaceable and not disorderly or calculated to excite disorders, and, second, to petition the international government in a proper and respectful manner for a redress of such grievances as they may have experienced.

The exercise of these rights should forever be placed beyond the power of the international government to prohibit or punish.[1]

V

The Keeping and Bearing of Arms

While, under the plan proposed, the war powers are to be conferred upon the international government, it is also proposed that the component States shall retain a certain proportion of regular armed forces, and in addition such militia as they may severally see fit to employ. On this account, if on no other, it would be proper to insert in our constitution a limitation upon

[1] See Appendix, Const'n U. N., Art. IV, Sec. 2, cl. 4.

the power of the international government to prohibit the keeping and bearing of military arms.

But the limitation is as important when applied to the people generally as when applied to the armed forces and militia. While the international constitution must not attempt to control the component nations in their respective attitudes to their own people in this matter, it ought carefully to provide that the international government at least be permitted to take no step which would deprive the people of any State of such rights as their State may give them to keep and carry arms, learn the use of them, and be prepared to employ them when necessary to defend their liberties against unjust attacks.

The component States and their people, in entering the international union and surrendering in large measure their own war powers, would do so to preserve an honorable peace, not to become the helpless and subservient victims of the agency they have created.[1]

VI

Quartering of Soldiers on the People

Past experience has taught that governments may sorely oppress their people through an unequal distribution of governmental burdens, whether in the form of taxation, of laws lacking uniformity, or otherwise.

[1] See Appendix, Const'n U. N., Art. IV, Sec. 2, cl. 5.

One way in which this has sometimes been done is by quartering soldiers upon the homes of the people, thus not only imposing unequal burdens, but very seriously impairing and interfering with the privacy and freedom of the home.

In times of peace the international government ought to be prohibited to do this altogether, and in time of war except in the mode prescribed by law.[1]

VII

Jury Trial in Civil Cases

The Seventh Amendment to the Constitution of the United States declares that

> "In suits at common law where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved; and no fact tried by a jury shall be otherwise examined in any court of the United States than according to the rules of the common law."

This suggests the question whether a similar provision ought to be contained in the proposed international constitution.

The jury system, while adopted from the English common law into the jurisprudence of many of the most advanced nations for service in criminal cases, has not been widely adopted as it applies to civil suits. This fact is some evidence at least that the jury system, as

[1] See Appendix, Const'n U. N., Art. IV, Sec. 2, cl. 6.

applied in civil cases in England and America, is not suited to the needs or habits of many of the other nations. Nor indeed does it go entirely unchallenged in America itself, for there is a growing sentiment among American lawyers and jurists that in civil cases conclusions as to disputed facts are more satisfactory when reached by the judge than by the jury.

These considerations point to the total exclusion of this clause from the list of limitations upon the powers of the international government, leaving the Congress free to adopt such system as it may deem best for the determination of facts in civil cases litigated in the international courts.

VIII

Power of Eminent Domain

It is universally recognized that every man holds his property subject to the public needs of the State, which has the power to demand it of him for the public use and benefit.

But to require him to surrender it for the public use would be to impose upon him an unequal burden, unless it were equalized by paying him a just compensation for his loss out of the proceeds of taxes levied ratably upon all members of the community. And to take the property of one for the mere private use of another cannot be justified upon any sound principle. It would be mere confiscation,—a taking of his property "without due process of law."

The American Constitution has recognized this principle, and has imposed a limitation upon the powers of the federal government by a provision that

> "private property shall not be taken for public use without just compensation."

In the United States this has been construed to mean that the owner of property which has been physically and corporeally taken or invaded by the government for the public use must be adequately compensated; but it does not apply to those mere incidental damages to property rights that result from the progress and growth of communities, or from the enactment of legislation restricting business, trades, occupations, or a person's use of his own property, within reasonable limits. These may create restrictions upon the legitimate uses the owner may make of his own, but they do not take the property from him, and therefore are held not to fall within the requirement that just compensation must be made him.

Indeed, no general law can well be passed that would not injuriously affect someone in his business or property rights. For such losses the government ought not to be required to make compensation. Thus, by the enactment of a law reducing the tariff rates upon certain goods or prohibiting the manufacture or sale of intoxicating liquors, the State does not actually take anyone's property from him for public use, and cannot

be required to pay for the losses incidental to the execution of the new regulations.

A similar provision, similarly construed, would not come amiss in our tentative constitution.[1]

IX

Due Process of Law

It is a principle of justice, written in indelible characters upon the human heart, that no man shall be condemned unheard and without a proper and reasonable opportunity to defend himself before an appropriate impartial tribunal and upon regular and orderly proceedings. Any other procedure is mere anarchy and the execution of the tyrannical and lawless will of the mob, whether or not accomplished under the forms of law.

This principle is expressed in English and American law by the phrase "due process of law" or "the law of the land," and in other countries is recognized under other names.

It would be as illegal for government, in any of its departments,—legislative, executive, or judicial,—to attempt to deprive a person of his rights without "due process of law" as for a mob or a private person to attempt it; and the fact that the attempt is clothed in the attire of a legislative or executive act or a judicial mandate does not make it any the less inherently il-

[1] See Appendix, Const'n U. N., Art. IV, Sec. 2, cl. 7.

legal, if suitable opportunity be not given the victim to defend himself or his property in a regular and orderly procedure.

Thus it would be as illegal, under this principle, for the legislature to declare by law that A's property shall be taken from him and given to B for his private use, or that A is a criminal whose life is forfeited, as it would be if these things were done by a mere party of rioters; and the same is true of the judgment of a court wherein the defendant has never appeared or been notified of the existence of the complaint against him, or of a court which has no legal jurisdiction to adjudge the question at issue. If these may be justified, then so may lynch law.

The Constitution of the United States has aptly and tersely expressed this limitation upon the federal power by providing that no person

> "shall be deprived of life, liberty or property without due process of law."

It should be observed that the term "liberty" as construed in the United States, embraces far more than the mere freedom from physical confinement. It extends also to freedom of contract, freedom of occupation and employment, and freedom in the use of all those faculties that contribute to human happiness, content, and comfort.

And the term "property" applies to *vested* rights in subjects of ownership, not to mere contingent or expectant rights such as the expectancy a sole child

may have that he will receive all his father's property at the latter's death.

In the proposed international constitution, in the absence of a phrase suitable to convey this idea common to all the nations, it would perhaps be unwise to use the technical phrase of the English and American law. It thus becomes necessary, in the place of the term "due process of law," to use language that will describe the principle as tersely as possible.[1]

X

Equal Protection of the Laws

The governmental power to pass discriminatory and preferential legislation, as has been indicated in several connections, is often a source of grievous injustice and oppression whether it be aimed at the component States of a federal union or at the persons subject to the governmental regulations.

Instances have already appeared in which our proposed international constitution has prohibited the federal government to enact legislation that might discriminate in favor of or against certain of the component nations.

It ought equally to be prohibited to use the international power in such manner as to discriminate unreasonably in favor of or against particular persons or classes. Hence a clause has been inserted in our

[1] See Appendix, Const'n U. N., Art. IV, Sec. 2, cl. 8.

constitution providing that no person shall be denied by the United Nations "the equal protection of the laws,"—a phrase which is found in the Fourteenth Amendment to the American Constitution.

As construed in the United States, this does not mean that governmental action shall be absolutely uniform in its application to all persons. It permits classifications of persons upon reasonable lines, and authorizes the application of different legislation to the different classes. But the classifications must not be purely arbitrary or based upon grounds for which no sound reason can be given. Subject to these limitations, the classifications may be as minute as the legislature may choose to make them.

When, however, the classifications have once been made, it would be a denial of the equal protection of the laws to single out individuals of the class, and make laws applicable to them which would not apply to other members of the same class who cannot be differentiated from the former upon any line that would justify the difference in the laws applicable to them, respectively.[1]

[1] See Appendix, Const'n U. N., Art. IV, Sec. 2, cl. 8.

CHAPTER XII

LIMITATIONS UPON THE POWERS OF THE UNITED NATIONS—(III) GUARANTEES OF INDIVIDUAL RIGHTS IN CRIMINAL CASES

I

Due Process of Law—Equal Protection of the Laws

The two limitations last examined in the preceding chapter apply equally to guarantee one's rights in civil and in criminal cases, and belong as much to this as to the preceding chapter.

There is no need to repeat the discussion, and they will be passed over.

II

Bills of Attainder—Ex Post Facto Laws

Our model, the American Constitution, provides as a limitation upon the federal powers that

> "no bill of attainder or ex post facto law shall be passed."

These two phrases are technical terms of the English and American law, and not only demand some ex-

planation, but also necessitate the use of periphrasis in the wording of the corresponding limitation in our international constitution, since the terms would be unknown in other countries, though the principles themselves might be recognized.

A bill of attainder is a legislative (instead of a judicial) adjudication of the criminal guilt of a person and a legislative sentence of the person convicted to execution, imprisonment, fine, or other punishment.

An ex post facto law, as defined in America, is a law which makes an act punishable criminally to a greater extent than when committed, or which alters the rules of evidence to the disadvantage of the accused, so as to require less or different evidence to convict him. It applies only to crimes, and not to civil rights, remedies or procedure.

These two provisions afford very important safeguards to the personal security of the individual against governmental oppression, and ought not to fail of insertion in the list of limitations upon the powers of the international government.[1]

III

General Warrants of Arrest and Search

Still another limitation imposed by the Constitution of the United States upon the federal power is found

[1] See Appendix, Const'n U. N., Art. IV, Sec. 3, cl. 1.

in the Fourth Amendment to that instrument, as follows:

> "The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures shall not be violated, and no warrants shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the persons or things to be seized."

Thus has been imbedded in the fundamental law of the United States that great principle of liberty expressed in the phrase, "One's house is one's castle," and which Lord Chatham so eloquently proclaimed in his speech on General Warrants, in the famous passage:

> "The poorest man may in his cottage bid defiance to all the forces of the crown. It may be frail; its roof may shake; the wind may blow through it; the storm may enter; the rain may enter. But the king of England may not enter. All his force dares not cross the threshold of the ruined tenement."

Whatever the domestic laws of the several States with respect to such matters, no nation in joining the proposed union could have other than a feeling of relief that the international government would be prohibited to exercise such arbitrary powers within its borders.[1]

[1] See Appendix, Const'n U. N., Art. IV, Sec. 3, cl. 2.

IV

Double Jeopardy

Another limitation upon the powers of the federal government of the United States is found in the constitutional provision that no person shall

> "be subject for the same offense to be twice put in jeopardy of life or limb."

This is the English and American legal expression of a principle of justice that probably prevails in one form or another in every civilized country, that is, that an accused person, having once been tried for an offense and either acquitted, or convicted and punished, shall not be subject to another trial for that particular offense.

This is a principle which should certainly be applied in all prosecutions by the international government for violations of its laws.

But in its technical application in the United States, the rule has sometimes been carried further than strict justice demands; for it is held that a person has been in jeopardy as soon as his trial commences, that is, as soon as the jury has been sworn and charged with his deliverance, and that therefore the right to try him again ceases, however guilty he may be, whether a verdict is reached or not, unless the trial is terminated by some inevitable necessity, such as the illness or death of the judge or a juror, or a divided jury, or unless

the prisoner himself asks or consents that he be placed again on trial (as he might do if he were convicted and desires a new trial).

Some of these technicalities and refinements would perhaps be unknown in other countries, nor do they appear specially called for by the general principles of justice.

It would therefore seem preferable to depart in this respect from the precise language of the American Constitution, while yet recognizing the principle.[1]

V

Self-Incrimination

That no one should be required to give evidence that would tend to convict him of a criminal offense has long been a deep-rooted principle of English and American law; but in its completeness at least, it can hardly be said to prevail generally or even usually in other systems of law.

The question then is presented whether this should be included as one of the limitations upon the powers of the international government for the protection of the individual.

The insertion of it would probably be strongly urged by the English-speaking nations, whose people are accustomed to regard it as a fundamental personal right; and no other nation would be likely to object seriously

[1] See Appendix, Const'n U. N., Art. IV, Sec. 3, cl. 3.

to its insertion, since the prohibition would decrease the chances of the oppression of its own citizens by the international government.[1]

VI

The Grand Jury

The Fifth Amendment to the Constitution of the United States declares that

> "No person shall be held to answer for a capital or otherwise infamous crime unless upon a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia when in actual service in time of war or public danger."

The institution of the grand jury, the function of which is not to try the guilt of the accused but only to determine whether the evidence against him is sufficient to justify his trial, is well known in England and the United States; but it is unknown in most of the countries of the world, in many of which other methods just as efficient are used to prevent frivolous or malicious accusations of crime.

It would seem prudent therefore to leave this matter to the discretion of the Congress.

[1] See Appendix, Const'n U. N., Art. IV, Sec. 3, cl. 3.

VII

Speedy and Public Trial in Criminal Cases

It is scarcely necessary to comment upon the importance of a constitutional guarantee of a speedy and public trial to one accused of crime.

In the absence of such guarantee, not only may an accused person be left to languish indefinitely in prison awaiting a trial that does not come, and thus in effect be punished for an alleged crime without a trial, but he might be tried secretly and convicted by an inimical or corrupt tribunal, regardless of the evidence of his innocence or by a procedure which, if public, would not be tolerated by general opinion.[1]

VIII

Jury Trial in Criminal Cases

The Sixth Amendment to the United States Constitution provides that in criminal cases the trial shall be

> "by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law."

This clause is construed as demanding, in all criminal prosecutions instituted by the United States, that

[1] See Appendix, Const'n U. N., Art. IV, Sec. 3, cl. 4.

the guilt or innocence of the prisoner shall be determined, in accordance with the principles of the English common law, by an impartial jury of twelve men (neither more nor less), whose unanimous verdict, after hearing the legal evidence adduced, shall be necessary to convict or acquit. If any juror dissents from the verdict of his fellows, there is a mistrial, and the prisoner may be tried again by another jury; but if all the jurors agree that he is innocent or that no sufficient evidence of his guilt has been adduced, the verdict is "not guilty," and he cannot be again tried for that offense.

The jury system in criminal cases, at one time confined to English-speaking nations, has now been adopted with more or less modification in many of the European countries and elsewhere, and may be said to have fully proved its usefulness in those cases.

From the standpoint of a constitutional protection to the accused, its advantage lies in the fact that it tempers the severity of the abstract law and the possible malice of prosecutors and government officials with the public opinion of the community as represented by the jury.

It is not essential, however, for these results that the jury should, as in England and in the United States, consist of twelve men, or that they should be unanimous in their verdict.

While it would seem wise to insert in the proposed constitution a requirement of trial by jury in criminal cases prosecuted before the international courts, such matters as the number of the jurors and the majority

necessary to find a verdict might well be left to the discretion of the Congress.[1]

IX

Other Guarantees in Criminal Cases

Every sentiment of justice and fairness demands that an accused person should be informed of the nature and cause of the accusation against him; that he be confronted with his accusers and the witnesses against him, with the right to cross-examine them and elicit the truth; that for the purposes of his defense he be placed upon an equal plane with his powerful antagonist, the government, and be given the right to obtain the compulsory attendance of witnesses in his favor; that he be not denied the aid and comfort of legal counsel in his defense; and that he be allowed his freedom while awaiting trial for a crime not too serious, upon giving bail or proper security that he will appear to answer the charge at the time and place appointed for the trial.

As in the other cases heretofore considered, no nation would be likely to object to the imposition of these limitations upon the international government, since they would all constitute valuable safeguards of life and liberty to its own citizens against possible tyrannical encroachments of the federal government.[2]

[1] See Appendix, Const'n U. N., Art. IV, Sec. 3, cl. 4.
[2] See Appendix, Const'n U. N., Art. IV, Sec. 3, cl. 5.

CHAPTER XIII

LIMITATIONS UPON THE POWERS OF THE COMPONENT NATIONS

I

General Limitations of a Non-Political Nature

As preliminary to an examination of the limitations which must be imposed upon the powers of the component nations in order to the success of an international union, it is proper to observe that, in a looser confederation of the kind here proposed, the fewer these limitations are, consistent with a suitable degree of power in the international government, the safer the constituent nations and the greater the probability that they may assent to the experiment. The burden then is on him who maintains the necessity of a particular limitation of this sort to show that the success of the union would be jeopardized by the failure of the component States to surrender all right to exercise the given power. This should be the one and only test of the propriety of the limitation.

The reader must also remember that a mere grant of power to the international government does not

necessarily imply the exclusion of the component States from the exercise of the same power. In order that the States be thus excluded, it is necessary either that they be actually prohibited by the compact to exercise it, or else that the international government shall have been granted the power and shall have already occupied the field, so that an exercise of the same power by the several States would be inconsistent with the superior right of the international government to regulate the matter.

Our model, the Constitution of the United States, contains a considerable number of limitations upon the powers of the States, only some of which, however, were imposed by the framers of the original Constitution. These are set forth in the tenth section of the first Article of that instrument. They were augmented by certain others to be found in the Thirteenth, Fourteenth, and Fifteenth Amendments passed as a consequence of the great conflict of 1861 between the States.

Some of the limitations thus imposed upon the State powers relate to the internal and domestic institutions, policies, and affairs of the States, or their relations to their own citizens as well as to other persons, tending in their operation to consolidate the States and their people into a single nation, but having little or no bearing upon that other great purpose of a federal union, and the chief purpose of the union we are considering,—the elimination of war between the component nations. To the extent that they do not aid

this chief design of our international compact, they ought to be eliminated from the discussion.

Thus the Thirteenth Amendment abolishes slavery within the United States and all places subject to their jurisdiction. It is obvious that this provision deals with an institution of an internal or domestic character which, while now obsolete in the most progressive countries, still prevails in one form or another in some countries less advanced. And though the majority of the nations would doubtless welcome the abolition of such institutions throughout the world, it must be remembered that this is one of those internal reforms that of itself has no bearing upon war or peace, and hence should theoretically have no place among the powers to be surrendered by the component nations.

But with respect to the slave trade, so far as it might be carried on between the component nations a different result would follow because of the grant to the Congress of the power to regulate international commerce. True, the Congress is forbidden under this clause to meddle with " immigration, emigration, or the migration of *citizens* of a component State from one such State to another." Slaves, however, would not be citizens of a State, though resident therein, but, as mere articles of merchandise, would fall within the power of the Congress to control international commerce. That body therefore might constitutionally enact laws making international traffic in slaves illegal as between the component nations or as between them

and nations not members of the union. Such laws, however, could not properly be extended into the borders of a component State, and made to apply either to the domestic institution of slavery or peonage existing there or to the domestic traffic in slaves. Such matters must be left, as they now are, subject to the exclusive control of the several States.

The success of an international union such as we are considering will depend upon the absolute observance of the principle that the proposed government shall possess no power to interfere in the local and domestic concerns of any nation except to the extent necessary to prevent war (or possibly in those cases wherein the general convenience of all nations would be greatly subserved by the exercise of a central authority, as perhaps in case of international coinage, currency, copyright, etc.).

Again, some of the limitations imposed upon the States by the American Constitution have for their object the protection of individuals against the possibility of aggression by the States. This is true even of a few of the limitations contained in the original Constitution, and is eminently true of those contained in the Fourteenth and Fifteenth Amendments.

Thus in Article I, Sec. 10, cl. 1, the original Constitution provides that no State

> "shall pass any bill of attainder, ex post facto law, or law impairing the obligation of contracts, or grant any title of nobility."

The Fourteenth Amendment declares that

> "All persons born or naturalized in the United States and subject to the jurisdiction thereof are citizens of the United States and of the State wherein they reside.
>
> "No State shall make or enforce any law that shall abridge the privileges or immunities of a citizen of the United States; nor shall any State deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

And the Fifteenth Amendment provides that

> "The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude."

With respect to all these limitations upon the powers of the States, the general observation may be made that they are not imposed upon those broad political powers (the exercise of which by the States might imperil the union's existence or interfere with its proper functions) such as the power to make treaties or to levy duties on imports or to declare war. They constitute limitations upon the power of the States to deal with individuals within their boundaries which, however essential in a constitution, one of the prime purposes of which is to create of the composite States a single nation—would be inappropriate in a constitution creating a looser confederation between independ-

ent nations, the main design of which is the suppression of wars between them.

It may also be remarked that the experience of the United States proves that certain of these clauses,—notably those prohibiting the States to pass laws impairing the obligation of contracts, to deprive any person of life, liberty, or property without due process of law, or to deny to any person within their jurisdiction the equal protection of the laws,—have furnished perhaps more grounds of litigation in the federal courts than any other clauses in the constitution; and have thus afforded greater opportunities to the federal authorities to interfere in the domestic affairs of the several States, and to expand the power and influence of the federal government at the expense of the sovereignty and reserved powers of the States. It is open to doubt whether a strong tendency in this direction is desirable even in the United States; it is very certain that it would be disastrous in the international federation.

All of these constitute reasons why these limitations upon the powers of the component nations should be omitted from our compact, and the several nations be left free as at present to deal with *their own citizens* within their borders as their own constitutions, laws and customs shall dictate. But it by no means follows that such limitations as we are discussing should not be imposed upon them with respect to their treatment of the citizens of other States.

On the contrary, when it is remembered that each

component nation will have surrendered its rights to use force against its sister nations, it is no more than fair and just, and indeed it would be necessary, that each nation in return should have a guarantee through the international constitution, to be enforced by the courts both national and international, that its citizens when in other States shall be treated with proper consideration; that their lives and liberty shall not be endangered by bills of attainder or ex post facto laws, or taken from them without due process of law; and that their property rights shall not be taken without like process, or by the enactment of laws impairing the obligation of contracts and the like.

This point, however, belongs more appropriately under another head, and will be examined again when we come to consider the relations of the component nations to each other in a subsequent chapter.

II

Political Powers Having No Bearing on War

In the previous investigation of the powers to be granted to the international congress, the conclusion was tentatively reached that possibly international convenience would be so greatly subserved by a grant to the Congress of the powers to coin money, issue currency, regulate copyrights and patent rights of an international character, and fix standards of weights and measures for purposes of international trade, as

to demand their inclusion amongst the powers granted, despite the fact that it would constitute a departure from the principle that only such powers ought to be granted as would aid in the suppression of war between the component nations.

It is now to be observed that even should these powers, or some of them, be granted to the Congress, this would not involve the necessity of the surrender by the nations of the concurrent powers to control and regulate them, provided their regulations be not inconsistent with those made by the Congress. It would seem eminently unwise to impose a total prohibition upon the States to exercise these powers.

III

Treaties, Alliances, and Confederations

We next turn to those powers, essentially of a political character, the exercise of which by the component nations would jeopardize the existence or functions of the international government. Here again the subject may be best developed by reference to the limitations imposed by the Constitution of the United States upon the exercise of such political powers by the American States.

With respect to the treaty-making power the American Constitution provides that

> "No State shall enter into any treaty, alliance, or confederation."

That the word "treaty," as here used, means treaty of a political character is shown by the further provision that

> "No State shall, without the consent of Congress, enter into any agreement or compact with another State or with a foreign power."

It thus appears that a State is absolutely prohibited to enter into any "treaty, alliance, or confederation," with or without the consent of Congress, while it is permitted, with such consent, to enter into "agreements and compacts" other than those just mentioned.

It is not difficult to discern the purpose of these limitations. The Constitution had elsewhere bestowed the entire treaty-making power upon the federal government, as representing with respect to foreign relations a single nation. Had the States been permitted to make treaties with foreign countries, great embarrassments might result to the federal and State governments alike, whose treaty obligations might conflict. And should these State treaties take the form of alliances or confederations with foreign countries, the conflict of duties might be even sharper and graver.

On the other hand, since it was the aim of the Constitution to grant to the United States the general control of interstate relations, the making of treaties, alliances, or confederations between the several States would be ineffectual, save as instrumentalities of disunion; and if, by reason of omissions in the Constitution, a question should arise between the States or with

foreign countries for the settlement of which some agreement between them might become necessary, this was provided for by the recognition of their power to enter into such agreement with the consent of Congress. There have not been many instances, however, wherein there has been need to invoke the power, agreements for the settlement of boundary disputes between the States constituting the most important examples.

In considering whether such a limitation ought to be inserted in our international constitution and, if so, the scope of it, we must remember that the conditions are not the same that confronted the American States when they established their Constitution.

They proposed to create to a certain extent a new nation amongst nations, whereas it is proposed here merely to create a political corporation or combination of nations possessing certain delegated powers, but not itself a nation; the international government being nothing more than the agent of the combined nations, with powers not inherent, but only emanations of the joint sovereignty of the nations which have created it through their compact.

It was necessary to grant to the United States, viewed as one nation, the exclusive power to deal with other nations on equal terms, and hence it was needful to give them a complete and plenary treaty-making power. This involved in turn the necessity of denying to the States all power to make treaties, alliances, or confederations.

The international union, however, would be of narrower scope, so far as its powers are concerned. It must be recognized that some nations might not become members of it, and as to these it would be necessary to confer upon the international government a certain treaty-making power commensurate with its war powers, its control of international commerce and communication and the other powers granted to it.

But to go beyond this, and grant to it the complete and plenary power to make treaties of all sorts with nations not members of the union, would necessarily involve a total surrender by the component nations of the treaty-making power even in respect to matters over which the international government would have, and ought to have, no control. Moreover, if the United Nations were given this general treaty-making power, these treaties must be regarded as laws of a dignity superior to the laws and policies of the several nations, thus involving a surrender of internal sovereignty which few nations would consent to make, and which, it is believed, would be unnecessary.

It would seem sufficient to grant to the international government the exclusive power to make all treaties with nations not members of the union which are proper and necessary to carry out the powers granted it, making it plenary and complete so far as relates to those powers.

On the other hand, while the component nations, like the American States, ought to surrender absolutely the right to enter into alliances and confederations with

other nations and into treaties dealing with subjects committed to the control of the international government, there would seem to be no good reason why they should not retain the power to enter into treaties of other sorts, provided the consent of the Congress be first obtained, and provided that it be made essential to the validity of treaties between component nations and those not members of the union that they contain provisions for the peaceable settlement of all disputes arising under them. The latter proviso would be unnecessary in case of treaties between two or more component nations because the constitution itself provides for the settlement of all disputes between them by the international courts.[1]

IV

Taxation of International Commerce

The student of history needs no reminder that perhaps most of the modern wars that have devastated the world have had their roots in the desire to extend the commerce of one nation at the unfair expense of others; and the student of politics will readily recognize that one of the favorite instrumentalities of this extension, and therefore one of the great destroyers of good will and harmony, as well as one of the great breeders of distrust and jealousy, between nations is to be found in tariff legislation and other forms of the taxation of international commerce.

[1] See Appendix, Const'n U. N., Art. V, Sec. 1.

It is a prime essential to any union formed for the purpose of creating and preserving mutual concord among its component nations, that there should be freedom of trade among them. This principle has been recognized in the constitution of every federal union thus far created, and is supported by every consideration of theory as well as of practical experience.[1]

The same general principle has been applied in the previous pages of this study to the international government itself not only by the grant to that government of the control of international commerce, but also by the restriction of it to a single form of taxa-

[1] If the British Empire be adduced as an instance to the contrary, it may be replied that, while it is true the British Colonies and Dominions have possessed and exercised the right to levy tariff duties even on imports from the British Isles, yet none of those colonies are in the position of being forced to receive or send imported or exported goods through the ports and custom houses of independent colonies or foreign countries, dependent upon their good will for the conduct of their trade.

Where such possibilities have existed, as in the case of the interior colonies or provinces of Canada, they have been met by the establishment of a federal constitution and the adoption, as between the colonies concerned, of absolute free trade.

Hence nowhere in the world is there important British territory without free access to the sea or dependent upon any outside authority for the security of its commerce, while other countries like Russia, Poland, Hungary, Serbia, and Rumania have sunk more or less into economic bondage because of the want of such access.

Nor is it only for this reason that freedom of trade would seem to be necessary between the component States of a federal government. Jealousy and ill-will are sooner or later the certain fruits of restrictions imposed by one sister State upon the trade of another. Even in the favorable position occupied by the British Empire, as just pointed out, it cannot be denied that there have been heard from time to time significant notes of discord resulting from the imposition of tariffs as between its parts.

tion,—that upon land. The grant to the federal government of the power to regulate international commerce, as a preventive of discord between the component nations, would be idle and useless, if it were not accompanied by a corresponding surrender on the part of the nations of the right to burden and restrict it through the exercise of the taxing power. By the exercise of such power one nation having an extensive seaboard might hold at its mercy a neighboring nation with little or none.

But it may be asked, How then shall the nations secure the revenues adequate for their purposes, if they cannot levy duties on imports?

One sufficient reply would be to point to England as having secured revenue sufficient for the conduct of her great empire not only without a tariff (except on a few luxuries) but at the same time under the burden of having to meet in her commerce the high tariffs of other nations. Yet she has survived and prospered exceedingly.

Or we might point to the component States of any of the existing federal unions to establish the fact that the right to tax imports is not essential to the existence or prosperity of a State. Indeed, the wider the extent of territory occupied by a federal union, and the greater the scope of the freedom of trade among its component States, the greater is this prosperity, other things being equal.

Again, to meet this question, it may be observed that in most countries the revenues from the tariffs do not

more than suffice to pay the great expenditures for the armaments which the constant dread of war makes necessary. Let each nation set off against the loss of revenue through its surrender of the right to levy duties on imports or exports the gain in the saving of armaments no longer needed, and the balance in most cases would be on the credit side of the account.

Furthermore, one must not overlook the great financial gain to the people of each State because of economies of expenditure that would be forced upon governments dependent for their revenue upon payments of taxes directly by the people.

The proposition would doubtless be antagonized by the privileged classes in every State, whose business is protected by the high tariffs, and many prophecies and threats of dire disaster would be heard. It would be argued that freedom of trade would be followed by the gravitation of manufactures to the point of cheapest production, and that thus each country would become less independent and self-sufficient. In reply it may be said that it is now considered desirable that a country produce all it needs chiefly because of the possibilities of war in cutting off its supplies from other countries. Once eliminate the chance of war, and the question would soon solve itself, and trade would follow the freer lines of least resistance.

It must also be remembered that all such arguments have been pressed with great vigor against the establishment of every federal union now extant, from the United States of America to the German Empire; yet

as between the component States of each union the freedom of trade established has never resulted disastrously to the States concerned, but on the contrary has given an augmented impetus to their industrial development.

There is another way, besides the laying of duties on imports and exports, wherein the component nations, if unrestricted, might impose taxes upon international commerce, that is, by laying duties on vessels or other vehicles of such commerce in proportion to their carrying capacity, not in proportion merely to their value as property. Through tonnage taxes of this description it would be possible for a component nation, if so disposed, to lay very considerable burdens upon international commerce or to pass preferential legislation in favor of or against the commerce of particular nations. This sort of legislation also ought to be prohibited by the international compact.

These do not exhaust the means that might be used by a nation for the purpose of aiding its own commerce at the unfair expense of other nations, but they would constitute the most usual means. Should others develop from time to time, exercises of the power granted to the Congress to regulate international commerce by uniform laws would suffice to put an end to such evil practices.[1]

[1] See Appendix, Const'n U. N., Art. V, Sec. 2.

V

The War Powers of the Component Nations

It has already been indicated that the success of an international union such as is here contemplated would be hopeless without a surrender by the component nations of the principal part of their war powers. Nor would it suffice for this purpose merely to grant to the federal government the power to keep troops and battleships and to declare war. There must also be an actual surrender by the component nations of a large portion of these powers.

But it can hardly be supposed that the nations, accustomed as they are to rely upon their own strong arms to enforce their rights and defend themselves against aggression, would consent to yield themselves bound hand and foot to the mercies of a federal government wherein other nations would have as great a voice as themselves, or even greater.

It is necessary, and indeed eminently desirable, that they should not surrender their right to organize and train militia, or citizen soldiery, not only because military force of this kind will sometimes be needed to quell internal disorders, but because it is possible that a nation may be called upon to repel attacks upon it from without, or even from within, the union; and while the federal government would be bound to aid a component nation against such attacks, its aid could be given only after an appreciable interval during

which the State ought not to be left without means of defense.

The real issue is not whether the component nations should reserve the right to organize and train militia, but whether they ought not also to reserve the right to keep a certain proportion of trained troops and ships of war.

The American Constitution forbids the States in time of peace to keep troops (other than militia) or war vessels. But there is one very important difference between the present conditions in which the nations find themselves and those confronting the American States when they formed their Constitution. Then none of the States had been accustomed to act independently as sovereign nations, waging war and making peace, or entering into international relations with foreign States; and none of them possessed either standing armies or ships of war. Thus they were not called upon to resign costly and much prized possessions, as would be many of the nations of today were they asked to enter an international union upon the condition that they at once surrender their armies and navies. International distrust and jealousy would doubtless forbid any sudden holocaust of armaments.

Not only then would it seem essential to provide in our international constitution for some plan of gradual disarmament of the component nations, but it is improbable that they would consent to any compact which would not permit them to keep a certain proportion of

regular troops and war vessels, say, ten per centum of the number kept by the United Nations.

These would serve as a nucleus for a regular army and navy, should a State find it needful to defend itself against unjust aggression, and yet would not suffice to encourage aggression on its part, especially towards another component nation aided in its work of self-defense not only by the tenfold regular forces of the union itself, but also by the forces of the majority of the States composing the union.[1]

But even yet the component nations might not regard themselves as absolutely secured by these provisions, since it would be possible that the international government, lulled into inaction or neglect by a sense of false security, might not itself keep a sufficient force of troops or ships of war to justify the nations with great territories and large subject or backward populations in regarding ten per centum of such force as sufficient to preserve internal order and peace within their limits.

Under the ten per centum rule the international government must keep an army of one million men in order that a component nation might possess one of one hundred thousand. An army of one hundred thousand would hardly suffice to police adequately the great territories of the Russian or British Empires, or even the United States.

But it is very doubtful if the international government, especially if it were to embrace among its members most or all of the Great Powers, would keep an

[1] See Appendix, Const'n U. N., Art. V, Sec. 3, cl. 1, 2.

army of a million men. More probably it would reduce the number by half or perhaps more. A corresponding compulsory reduction on the ten per centum basis of the domestic armies of the component nations might in some cases reduce their forces below the safety point in the control of their internal affairs.

It would seem prudent therefore to name a minimum below which no nation might be compelled to reduce its armies or navies. The minimum of troops ought to be expressed in terms of percentage of population since the main purpose of the domestic armies of each State would be to preserve peace and order among its population, while the minimum of ships of war ought to be expressed in terms of percentage of the merchant marine tonnage of each nation, since the main function of the naval force of each State would be to safeguard its ocean carried commerce.

The minimum percentage of troops has tentatively been placed at one-tenth of one per centum of the population in each State, and the minimum percentage of ships of war of each nation at a tonnage of one per centum of the tonnage of its merchant marine.[1]

VI

Territorial Acquisitions by Component Nations

With freedom of trade established between the component nations, with the surrender by them of the right

[1] See Appendix, Const'n U. N., Art. V, Sec. 3, cl. 3.

to impose burdensome taxes or other restrictions upon international commerce, and with the passing of the need for great armies, navies, military bases and coaling stations, many of the reasons for the national desire to acquire territory would also disappear.

But if we would abolish war it is necessary to remove all temptations to acquire territory at the expense of other nations. Occasionally the acquisition is actuated by a blind and unintelligent desire for increased possessions, there being no particular national design in view. Mere pride of possession is the ruling motive. Much more usually, however, there is a definite purpose in such territorial acquisitions. This motive is one of three:—either national sympathy with the people occupying the territory, resulting in a desire to make them independent or in a mutual desire to blend into a single nation; or the wish to expand the national commerce by unfair or forcible means; or to secure by like means military or political advantages. Of these only the first mentioned is ever justifiable, and that is often used as a cloak to conceal one of the others. Without one or the other of these motives there would be little or no temptation to any State to acquire the territory of another.

It ought, then, to be the aim of our international constitution so to limit the powers of the component nations in this matter as to eliminate the temptations to the unjust and forcible acquisition of a neighbor's territory.

A long step in this direction will have been taken

when the component nations agree to surrender their control of, and their right to burden, international commerce; and another, when they give up their general war powers. But the surrender of these does not exclude all possibility of an acquisition of territory in war or in peace that may cause the old fires of jealousy and suspicion to break out afresh among them.

There ought therefore to be additional limitations prohibiting them to acquire territory belonging to another nation except, first, in time of peace, with the consent of the nations concerned, and, second, in time of peace or war, only with the consent of such a majority of the international congress as may suffice to convince all the component nations that there can be no ulterior harmful design lurking behind the acquisition. That majority has been placed tentatively at three-fourths of the members of each house of the Congress, upon the theory that such an alteration of the territorial boundaries of a component State may constitute as important a change in the relative status of the nations as would the passage of a constitutional amendment, and should therefore require the assent of the same majority of the nations represented in the Congress.[1]

[1] See Appendix, Const'n U. N., Art. V, Sec. 4.

CHAPTER XIV

RELATIONS OF COMPONENT NATIONS TO EACH OTHER AND TO THE UNION

We are next to examine the provisions to be inserted in the proposed constitution with reference to the relations between the component nations themselves on the one side and between them and the union on the other.

The right of the nations to make treaties with one another touching all matters not surrendered to the control of the international government has been already considered, and the conclusion reached that this power, so limited, should be reserved by them. Thus, such matters as the extradition of criminals, or the personal or civil rights of the citizens of one State in another, might always be adequately provided for by treaty between the respective nations, as their wishes or policy might dictate.

The topic now to be discussed relates to matters more fundamental and far-reaching.

I

Protection of the Fundamental Rights of the Citizens of One State While in Another

Reference has just been made to the fact that by treaty one nation within or without the union may se-

cure to its citizens in any component State such personal or civil rights as may be agreed upon.

But there are certain fundamental rights of which the citizens of a State, even in the absence of treaty, could not be deprived by a component nation without the gravest danger of resulting discord and retaliation, leading direct to disunion or to war.

The violation of such rights is always caused by intentional or unintentional acts of gross injustice to the citizens of other States, and can never be justified by any proper view of necessary public policy. The component nations ought to find no difficulty in surrendering the right to enact such unjust laws or to commit such acts against citizens of another State, whatever attitude they may assume with respect to the sort of treatment they have the right to accord to their own citizens.

Thus if a nation, by means of legislative convictions of crime (bills of attainder), or the enactment of retroactive laws punishing crime (ex post facto laws), or laws impairing the obligation of contracts, all of which are oppressive and unjustifiable, should deprive the citizen of another State of his life, liberty, or property, such action would at once give rise to serious grounds of complaint on the part of the State whose citizen has been so treated, and would lead to grave dissensions, if nothing worse. How much better to check such tendencies in their inception by prohibiting the sort of action that would give cause for the complaint, and to allow the foreigner thus threatened the opportunity of

testing the validity of the law, if necessary, in the international courts. Such a course would give the aggrieved party a sure judicial investigation of the grounds of his complaint and an impartial judicial remedy against such invasions of his rights, so that his own country would be relieved of all responsibility for the enforcement or recognition of his claims.

The same result would follow, were a like judicial inquiry and remedy afforded, if needed, by the international courts in cases wherein a component nation is alleged to have attempted unjustly to deprive a citizen of another State (within or without the union) by legislative, executive, or judicial action of his life, liberty, or property without giving him opportunity to be heard in his own defense, or where it is alleged to have been guilty of unjust discriminations against such foreigner with regard to his personal or property rights; or where it is alleged that the treaty rights of the foreigner have been violated.

The component nations, whatever their jealousy of an inquiry into the customary treatment of their own citizens, ought to be willing to unite in a compact prohibiting them to engage in such conduct towards the citizens of other countries. And this being done, the Congress should see to it that, in case of alleged violations of these provisions, the complaining party be given the right to have the validity of the law, or other governmental act complained of, investigated and adjudged by the international courts.[1]

[1] See Appendix, Const'n U. N., Art. VI, Sec. 1.

II

Protection Afforded by the United Nations to Citizens of Component States While in Foreign Countries

The clause just examined would adequately protect the citizens of a State (either a member or not a member of the union) while in another State which is a member of the union. But it would have no application to instances of oppressive conduct by a State not a member of the union towards citizens of component States who might be within its limits.

All existing federal unions, as has been indicated more than once, have been formed with the design not only to avert war between its members, but to create in many respects one single new nation, with the rights and privileges of a distinct member of the family of nations; and to that end the individual States composing the union have invariably surrendered their right to deal with foreign countries except through the union itself. This creation of a single nation possessing the right to engage in international relations and in war, involves the consequence that each citizen of a component State shall also be a citizen of the union, and as such shall look to the federal government, not to his State government, for that protection when abroad that each nation is bound to afford to its citizens.

But with respect to our international union the conditions are materially different. It is not the intent

in this case to create a new State except in a very limited sense and for very limited purposes; nor is it proposed that the component nations surrender their right, save to a limited extent, to enter into relations with other nations. The international union would be a purely political conception, would possess no territory of its own (except the seat of government) and would have no citizens of its own (except citizens of the seat of government). If, however, the component nations shall have surrendered their war powers, the relinquishment implies a guarantee that the international government will take upon itself the duty of granting that protection in foreign countries to the citizens of each nation which, by reason of such surrender, the nation itself can no longer give.

While this responsibility of the federal government would perhaps be implied from the context of the proposed constitution, the matter is of too great importance to be left to implication; a guarantee should be expressly inserted to the effect that the international government shall protect the citizens of each component nation, when in foreign countries, in all such rights and privileges as they may there claim under the Law of Nations or under particular treaties.[1]

[1] See Appendix, Const'n U. N., Art. VI, Sec. 2.

III

Protection of Component Nations Against Invasion

It is evident that a guarantee that the international government will protect each component nation against the hostile invasion of its territories is a condition *sine qua non* to the surrender by the nations of their war powers, indeed the condition of the establishment of the union. No existing federal constitution is without such a guarantee.[1]

IV

Internal Dissensions in Component States

The American Constitution guarantees that the United States will afford protection to the several States not only against invasion, but also against domestic violence on application of the State authorities.

To a proper understanding of the conditions under which this clause was inserted in the American Constitution, it must be remembered that the several States had surrendered all their war powers (except the keeping of militia), that the State governments were all republican in character, and that the Constitution had guaranteed that they should ever so remain. The State governments being already entirely in the hands of the people, internal dissensions and armed resistance

[1] See Appendix, Const'n U. N., Art. VI, Sec. 3.

to authority could never assume the form of a struggle by the people against an oppressive or tyrannical government for political freedom, but would always represent the efforts of a factious minority to overcome by force of arms the will of the majority.

There would be no reason in principle therefore why the majority, as represented by their chosen legislatures or executives, should not call to their aid the forces of the United States, in the absence of a sufficient militia force to quell the disturbances,—especially since by reason of the lack of such aid the factious minority might obtain control, and thus the republican and popular character of the State government be overthrown, contrary to the express guarantee of the Constitution.

But a far different situation confronts the nations in the establishment of our international union. Each of them has its own form of government; some monarchical, some republican, some federal; some under popular control, some with governments more or less arbitrary.

Should internal dissensions occur,—and especially should they advance so far that several governments are established within a State, each claiming to be the *de facto* government and each calling upon the international government for aid in suppressing the other,—questions of great delicacy would arise, fraught with danger to the entire union, according as the sympathies of the component nations would be severally extended to the one or the other party.

If, in a particular State, the civil war would take the form of an uprising of the people against an arbi-

trary government, those component nations possessing republican forms of government and popular institutions would vigorously object to the use of the forces of the United Nations for the purpose of suppressing the political aspirations of the people in the distracted State, while those possessing monarchical institutions might be no less vigorous in their demand for the suppression of such popular aspirations.

Such conditions would make for a rapid and luxuriant growth of discord and jealousy among the component nations, if not for a speedy disintegration of the union itself. Yet they would seem to be sooner or later the certain consequences of any guarantee on the part of the international government to render aid to the governments of the several component nations in quelling domestic disturbances.

If we are to consider the preservation and continued usefulness of the union, there can be little doubt that it ought to leave such domestic dissensions severely alone, and that both the international government and the governments of the other component nations ought to preserve an attitude of strict neutrality between the contending factions until the contest is settled by the final overthrow of one or the other party or by the establishment of part of the original territory as a new and independent State.

In the meanwhile, however, as both parties obviously cannot be represented in the international congress or appoint judges to the international courts, and as it would be eminently undesirable for the reasons above

mentioned that the international government be given a discretion as to which faction it may recognize as the lawful government, the constitution ought to provide for the continued recognition of the original government, so far as relates to the national rights and functions under the international compact, until such government is completely overthrown and a new one substituted therefor, in which event the latter should at once become entitled to enjoy such rights and functions.

These are merely applications to political conditions of the two equitable maxims, "first in time, first in right," and "as between equal equities the legal title shall prevail." They preserve the strict attitude of neutrality that should be assumed by the international government and by the other component nations, and neither faction would have any just cause of complaint. Thus only can the union be secured against the disintegrating forces that would lurk in the internal dissensions that may be expected to arise from time to time within the several States.

Should such a civil war as we have supposed result in the dismemberment of the State, so that the original government would continue to control part of it while the remainder is erected into a new and independent State, the latter would of course at once drop out of the union, and could only be admitted thereto on the same terms as other outside nations,—terms to be presently examined. But that portion of the State left under its original government would remain in the union, though, since its population would be reduced

by the dismemberment, it would become necessary to readjust its proportion of representation in the House of Delegates.[1]

V

Admission of New States Into the Union

The international union once organized, the admission of new States to it from time to time might sometimes present important questions to the consideration of the component nations, for it would be possible that the admission of a particular State might, under certain circumstances, be distasteful to some of the nations concerned, might be more likely to create discord than harmony among them, and hence might be more apt to weaken than to strengthen the union.

The admission of a new State might materially alter the existing relations of every nation in the union,—as much as would many an amendment to the constitution,—and, if capable of accomplishment by the consent of a bare majority of the component States through their representatives in the Congress, it might easily do the cause of peace more harm than good.

It would appear to be reasonable to demand for such admission the consent of the same number of component nations as would be required to pass an amendment to the constitution itself, that is, three-fourths of each house of the Congress.[2]

[1] See Appendix, Const'n U. N., Art. VI, Sec. 4.
[2] See Appendix, Const'n U. N., Art. VI, Sec. 5.

CHAPTER XV

RESERVED RIGHTS OF THE COMPONENT NATIONS

I

General Reservation of All Powers Not Surrendered

While it might readily be implied from the general tenor of our supposed international compact, and from the fact that the proposed federal government is one of enumerated powers only, that the component nations have reserved all powers not granted to that government nor prohibited by it to the nations themselves, yet, as in other cases of important rights, it would be unwise to leave the matter to conjecture and implication.

A clause is therefore inserted expressly declaring that the powers not delegated to the United Nations by the constitution, nor prohibited by it to the component nations, as well as the sovereignty and independence of the latter, are reserved to those nations, respectively.[1]

[1] See Appendix, Const'n U. N., Art. VII, Sec. 1.

II

Right of a Component Nation to Withdraw From the Union

Here we are confronted with a difficult problem, the importance of which will be realized when it is recalled that this is the identical question over which the great American War of 1861 was fought.

The Constitution of the United States had not expressly determined in one way or the other the right of a State to secede from the Union after it had once acceded to the Constitution.

Without undertaking to discuss the merits of that great controversy, suffice it to remind the reader that certain of the Southern States, convinced that their reserved rights and liberties were endangered, exercised what they believed to be their constitutional right to secede and establish a new union of their own. This right the Northern and Western States, which constituted the majority of the States and controlled the federal government, declined to recognize. In the absence of any clause in the Constitution providing expressly for the case, the difference of opinion with respect to the proper interpretation of that instrument led directly to the war.

The one lesson to be learned from this chapter of American history is that, whatever other provisions the nations may make in contemplation of an international union, they ought not to leave this point ambiguous or

undetermined. Their league or compact must declare either for or against a reservation of the right of the several States to secede.

Should this declaration be opposed to a right of secession, it would be difficult to secure the assent of any nation to surrender irrevocably some of its high sovereign rights merely for the sake of an untried experiment, which might possibly operate injuriously to the liberties of some at least of the nations concerned, however carefully those liberties may have been safeguarded. Experience alone can disclose the ultimate success or failure of so grand an experiment.

Nor must it be forgotten that if secession were forbidden and yet a nation or a combination of nations were resolved to withdraw despite their agreements, nothing but force could restrain them; but the use of force is the very thing the union would be established to prevent. A union formed to eliminate war, yet held together permanently only by force, would savor strongly of absurdity.

On the other hand, if the right be reserved to each nation to withdraw at will, there would be grave danger of the total failure of the experiment and the speedy dissolution of the union, due to the unwillingness of the several nations to make concessions of their own selfish interests for the common good of all. This danger would be likely to arise especially in the earlier years of the new government's existence, before the nations had begun to realize fully its advantages, or before they had rid themselves of their old attitudes of mutual

suspicion and jealousy and had substituted therefor the spirit of good will and concord that would follow upon continued co-operation and the successful results of their joint labors.

A just and proper compromise between these extremes would seem to be to reserve to each component nation the right to withdraw from the union after (say) twenty-five years from the date of its accession.

This, coupled with the checks afforded by the power of a State to veto the legislation of the Congress, the power of the international Supreme Court to pass upon the constitutionality of such legislation, the division of power between the two houses of the Congress representing respectively the equal rights and the unequal populations of the component States, and the limited scope of the powers conferred upon the international government, would seem to constitute sufficient guarantees of the reserved rights of the component nations.

At the same time such a provision would obviate the danger of the hasty or passionate withdrawal of a State from the union merely upon vague suspicion of unjust aggression on the part of sister nations,—a course which might result in a speedy destruction of the entire edifice.

After a nation has been a member of the union for twenty-five years a new generation will have come upon the scene, better able to weigh the relative advantages and disadvantages of the union, and having forgotten the political rancors that might be engendered by the enactment of the first measures of general relief. The

second or a succeeding generation of citizenship in each State would be in a better position to determine whether the blessings of the union would not outweigh its burdens.

Even during the first twenty-five years the fact that any nation at the end of that period would have the right peaceably to withdraw if its interests were not being protected by the union would operate as a conservative influence and a useful restraint upon harsh or unjust legislation. The spirit of compromise and consideration for the rights of all in the conduct of the international government would take the place of the obstinate disregard of the majority for the minority of the nations that would be more likely to characterize the government if the component nations were without the right to secede.

But a nation proposing to secede from the union ought to be required to give due notice (say for one year) to the Congress of its intention. Not only would the nation itself thus pay a proper and decent respect to comity and to the rights of the union and the other component nations, which might suffer by the hasty execution of such a purpose, but it would give time for sober reflection on all sides and an opportunity for each by mutual concessions so to modify the general conditions as to make it possible for the seceding State to reconsider its decision.[1]

[1] See Appendix, Const'n U. N., Art. VII, Sec. 2, cl. 1.

III

Rights of Seceding State in the Common Property of the Union

One more question remains to be discussed in this connection. That question relates to the respective rights of seceding and non-seceding States in the common property of the union, such as the ships of war, the money in the treasury, the forts, arsenals, public buildings, and other improvements belonging to the federal government, the benefits of much of which would be lost by a seceding State, though paid for by it in proportion to its wealth.

Should the seceding nation be entitled to its proportionate share of the common property in kind or in money commutation therefor, and if so how should that proportion be ascertained? Or ought the rule to be that a nation entering the union does so upon condition that it shall lay no claim to the common property (outside the limits of its own territory) in case it should later determine to withdraw?

There can be scant room to doubt that the juster is also the wiser course. To proclaim that a seceding nation shall not be entitled to any share of the partnership property acquired by joint expenditure of treasure and labor, except such as may happen to be located within its own boundaries, would probably repel many a nation that might otherwise join the union, and would be likely to inspire the seceding nation or nations

with sentiments of ill will and resentment that might forebode evil to the general peace.

True, the difficulties in the way of a fair adjustment of the respective rights would often be great, but the value of the share of a seceding nation in the common property, after deducting its share of the common debts and the value of forts, arsenals, and other public buildings erected by the federal government within its territory, may be determined, approximately at least, upon equitable principles by the Supreme Court, whose decision would doubtless constitute the most satisfactory mode of disposing of the matter.[1]

[1] See Appendix, Const'n U. N., Art. VII, Sec. 2, cl. 2.

CHAPTER XVI

SUPREMACY OF THE INTERNATIONAL CONSTITUTION, LAWS, AND TREATIES

I

The Declaration of Supremacy

Although it is proposed to grant to the international government only very limited powers, it is yet essential that so far as its powers do extend, its exercise of them should be of an authority paramount to a conflicting exercise of similar powers by the several component nations. Otherwise there would follow anarchy, confusion and possibly the very evils the federal government would be organized to avert.

So manifest is this conclusion that it might almost be left with safety to be implied from the nature and context of the constitution. But in a matter of such profound importance it would be imprudent to leave to mere implication what may be readily and clearly expressed in few words.

This principle of supremacy would apply not only to the international constitution itself, but to all the laws and treaties made by the international govern-

ment in pursuance of that constitution. But it would have no application to such of the laws or treaties of the international government as might be in violation of that instrument; they would be mere exercises of usurped powers, void and of no effect.

It must follow therefore that in any matter of judicial cognizance arising within any component State or in the seat of the government, it would be the duty of any judge, whether of a national or an international court, in choosing between conflicting national and international laws or treaties as controlling the case before him, to select and enforce that law which his own country has itself in the most solemn manner possible declared to be supreme within its borders,—the constitution of the United Nations, and the laws and treaties of the international government made in pursuance thereof.[1]

II

Official Oath to Support the Constitution

It would of course be proper and necessary that all officials of the international government be required to make oath or affirmation that they will support the international constitution.

But it is necessary to go further than this. In order that the legislative, executive, and judicial officers of the several component nations may feel and realize at all times the obligation resting upon them also to rec-

[1] See Appendix, Const'n U. N., Art. VIII, Sec. 1.

ognize and uphold the international compact as the supreme law and as part of their own constitution and laws, it would be right and proper to require of them, upon their assumption of office, an oath or affirmation that they will support the constitution of the United Nations.[1]

[1] See Appendix, Const'n U. N., Art. VIII, Sec. 2.

CHAPTER XVII

AMENDMENTS TO THE CONSTITUTION

I

General Considerations

That no plan of government devised by the wit of man can escape the need of amendment from time to time, as defects in its organization or powers develop, is too plain for argument; and prudence dictates that any plan proposed should contain a prearranged method of amending it. Especially would this be true in case of an experiment in government on a scale so vast as that here contemplated.

Much might be said for the proposition that no power of amendment should be given save by the unanimous consent of all the component nations. So far as the original compact is concerned, the nations would know exactly what they are assenting to, and it might be plausibly argued that the same principle ought to apply to the subsequent insertion of new matter into the constitution by means of amendments.

But when we consider the experimental nature of the compact, and that experience may prove that too much, as well as too little, power has been surrendered by the

component nations,—when we recall the extreme difficulty of securing unanimous assent to the adoption of any measures, especially of such complex character as would be here involved,—and when we consider that a requirement of the assent of a large majority of the nations to any amendment would be nearly as secure a guarantee that the reserved sovereign rights of each will be protected against invasion, while yet making it more possible to secure desirable amendments,—it would seem the more prudent part to make provision for amendments through the assent of less than the entire membership of the union, but nevertheless requiring the consent of so large a majority as in effect to protect the minority against changes adopted merely for the political advantage of the majority.

Much the same problem presented itself to the framers of the American Constitution, who solved it by requiring the assent of three-fourths of the States for the adoption of an amendment. In actual practice in the United States this requirement has been found to work well. It has prevented from time to time the passage of many ill-considered and unwise amendments urged by zealous reformers, and yet has admitted of sufficient freedom to permit the enactment of seventeen amendments within the period of one hundred and thirty-five years.

Twelve of these received the assent of the requisite majority of the States within the first twenty-five years of our constitutional history; indeed, the enactment of the first ten practically constituted the condition upon

which many of the States ratified the Constitution. The Thirteenth, Fourteenth, and Fifteenth were passed in consequence of the War of 1861; and within the last few years the Sixteenth and Seventeenth have been enacted.

It is not too much to claim that the American system of constitutional amendment has well fulfilled its functions of making possible such changes in the Constitution as are desirable and earnestly desired by the States.

It may also be remarked that, with the exception of the three "war amendments" which were passed under abnormal and peculiar circumstances, the almost universal tendency of the amendments has been to curtail the powers of the federal government, not to diminish the powers of the States. Most of the curtailment of the latter powers that has occurred has been effected through construction of the Constitution by the judicial and executive departments of the federal government, not by actual constitutional amendment.

Experience in the United States therefore would seem to teach the lesson that members of our international union would have more to fear, so far as concerns the protection of their reserved rights, from the departmental constructions of the proposed constitution than from any actual amendments receiving the assent of a large majority of the component nations.

But even the dangers arising from departmental constructions, usages and practices have been met in the proposed international compact by checks and bal-

ances unknown to the American Constitution, which would suffice, if not to eliminate, at least to disarm them of most of their power to hurt.

Thus the members of the international congress are made the direct agents and servants of their respective nations, appointed as they see fit and subject to recall by them at their pleasure; each component nation may veto any law of the Congress on the ground that it impairs the reserved rights of the nations, in which case the law can be passed only by the assent of such a majority in each house of the Congress as would suffice to amend the constitution; each State, after twenty-five years of membership, has the right to withdraw in peace from the union; the executive department is entirely responsible to the Congress, and subject to recall at the will of either house, the members of which in turn are made sensitively responsive to the wishes of their respective nations; the international judges are to be appointed by the executive heads of the several nations, not by the authority of the United Nations; and a three-fourths majority of the Supreme Court or of any section thereof is required to declare any legislation or treaty of a component nation violative of the international constitution or laws.

These governmental checks and balances appear to be sufficient guarantees that the reserved rights of the component nations cannot be seriously affected by departmental constructions; while actual experience in the United States, no less than theoretical considerations, would attest that little danger to the reserved

powers is likely to arise from actual amendments for the passage of which the assent of a sufficiently large majority of the component nations is required. The three-fourths majority of the States demanded for this purpose by the American Constitution has worked admirably in practice, and the nations could scarcely do better than follow this example.[1]

II

Proposal of Amendments

The clause in the Constitution of the United States dealing with the modes of proposing amendments, reads as follows:

> "The Congress, whenever two-thirds of both houses shall deem it necessary, shall propose amendments to this Constitution, or, on the application of the legislatures of two-thirds of the several States, shall call a convention [of the States] for proposing amendments."

It will be seen that this clause provides for two methods of proposing amendments (1) by a two-thirds vote of both houses of the Congress; (2) by a convention of the States, upon the application of the legislatures of two-thirds of the States. In practice no amendment has ever been proposed by the second method.

Under our international constitution, with its organi-

[1] See Appendix, Const'n U. N., Art. IX.

zation of the Congress composed of members appointed and removable by the several States at their pleasure, these two methods would become practically identical, since two-thirds of the component nations might at any time instruct their delegates in both houses of the Congress to propose or support a given amendment.

That a two-thirds majority in each house of the Congress, rather than a bare majority, ought to be required for this purpose is indicated by the fact that if a two-thirds majority of the component nations cannot be secured for the proposal of an amendment, it would be idle and useless to attempt to obtain a three-fourths majority for its final passage.

On the other hand, the possibility of the later conversion of some of the nations to the amendment would dictate that the majority required for the proposal of it be not so large as that demanded for its ultimate enactment.[1]

III

Enactment of Amendments

After providing for the two methods of proposing amendments, as above described, the American Constitution declares that when an amendment has been duly proposed, it shall

> "be valid to all intents and purposes, as part of this Constitution, when ratified by the legislatures of three-fourths of the several States, or by con-

[1] See Appendix, Const'n U. N., Art. IX, Sec. 1.

> ventions [of the people] in three-fourths thereof, as the one or the other mode of ratification may be proposed by the Congress."

The American States being republican in form and the ultimate sovereignty resting in the people thereof, it is eminently proper that such fundamental legislation as would be comprised in an amendment to the federal Constitution should receive, as essential to its validity, the assent of the people themselves in each State, either through their chosen representatives in the respective State legislatures, or through their still more specially chosen representatives in conventions of the people held in each State and called for the purpose.

To have left the enactment of an amendment to Congress would not have been in the least consistent either in theory or practice with the real foundation upon which the American Constitution rests,—the free consent of the people of the several States.

But in the case of our international compact the circumstances are very different. The constitution of the United Nations would not necessarily rest upon the consent of the people of the several nations or their representatives,—whether it would or not in case of a particular nation would depend on the form of its own constitution. Theoretically in each case, since the constitution would be an international compact or treaty, its validity would depend upon the valid exercise of the constitutional treaty-making power by the government of each component nation; or if the treaty-making power has not the constitutional right to make

such a treaty, then by an appeal to the constitution-making power.

In our case therefore it would be impracticable to insert a clause such as that in the American Constitution providing that amendments receive the assent of the people of the several component nations. Indeed it would be needless to refer the matter formally to the component nations at all, the assent of their representatives in the Congress (who would be entirely subject to the will of their governments) being a sufficient guarantee of the assent of each nation to the proposed amendment.

But a certain period of notice ought to be required after the proposal of an amendment by the Congress before its final passage by that body, so that ample time may be given the several national governments to determine the position they ought to take with respect to it, or, if the national constitution so requires, to obtain the desires of their people on the subject.

For instance, if the United States were one of the component nations, no amendment to the international constitution could probably be assented to by it without some corresponding amendment to the Constitution of the United States, to which the assent of three-fourths of the States would be necessary. It would take several years to obtain this assent if it were obtained at all.

While therefore a three-fourths vote of each house of the Congress would suffice to enact an amendment

to the international constitution, it would also be important to provide that no vote upon the passage of an amendment be taken in either house of the Congress until a reasonable time (say, four years) after the formal proposal of it. This would give the several national governments adequate opportunity to consider the subject in all its bearings and would also answer the requirements of nations situated like the United States whose governments are responsive to the will of the people.[1]

IV

Limitations Upon the Power of Amendment

The Constitution of the United States declares that no State shall by any amendment be deprived of its equal suffrage in the Senate. The reason for this limitation is obvious. It was inserted in order to prevent the passage of any amendment which would destroy the constitutional balance between the smaller and the larger States through the equality of representation in the Senate.

Without question our international constitution ought to contain a similar limitation, since the balance of the equal representation of sovereignty in the upper house against the unequal representation according to population in the lower is one of the fundamental conditions of the union.

But this is not the only basic condition of the com-

[1] See Appendix, Const'n U. N., Art. IX, Secs. 1, 2.

pact as proposed. Others are the right of the more populous States to be represented in the lower house of the Congress in proportion to federal population; the right of each component nation to veto the legislation of the Congress which it believes subversive of the reserved rights of the nations; the right of a nation to withdraw from the union after a designated term of membership; the right of each nation to its equal representation upon the Supreme Court of the United Nations; and the exemption of the sovereign or chief executive of each nation from the operation of the judicial power of the United Nations.

These are all fundamental conditions of our international compact, without the existence and guaranteed continuance of which no nation would probably be willing to assent to it. An express provision therefore should be inserted to the effect that no amendment shall be passed which shall affect them, except by unanimous consent.[1]

[1] See Appendix, Const'n U. N., Art. IX, Sec. 2.

CHAPTER XVIII

DISCIPLINE OF A COMPONENT NATION

I

Violations of Constitutional Obligations by a Component Nation

The checks and balances already suggested for our proposed constitution would seem sufficient to prevent the international government itself from violating the compact by unjustifiable encroachments upon the reserved powers of the component nations.

That each nation would possess a right of qualified veto upon international legislation, would have an equal voice upon the Supreme Court,—the final interpreter of the international constitution, laws, and treaties,—and in the last resort would have the right to withdraw in peace from the union, would appear to constitute sufficient safeguards against any permanent violations on the part of the international government or any majority of its sister nations of the obligations towards it imposed upon them by the constitution.

On the other hand, however, while our plan as thus far developed has imposed upon each component nation certain obligations and duties toward the interna-

tional government as a whole and toward its sister nations, no check has as yet been suggested whereby, if a component nation radically or persistently violates these obligations, pressure may be brought to bear upon it to compel it to observe them.

It is not necessary to suppose a component State so indifferent to its duties as to fail to send delegations to the Congress or to fail to appoint its delegates to the Supreme Court or to other international courts within its boundaries, thus embarrassing the operations and functions of the international government. No component nation would be likely to act thus, since it would thereby merely lose its voice and influence in international affairs while yet, so long as it might remain in the union, it would be bound by the laws and decisions passed. Should a nation ever reach such a stage of indifference it would be far more likely to withdraw at once from the union, as it would have the right to do.

The cases chiefly to be guarded against would be those wherein a nation, while willing and anxious in general to avail itself of the advantages of the union, would yet be slow and unwilling to pay the price in cheerfully and loyally yielding to the constitutional wishes of the majority of its fellows.

Suppose for example a component nation to refuse to give up an excessive proportion of armed troops or ships of war, paying no regard to the action of the Congress in that regard; or to decline to obey an adverse judgment of the Supreme Court in a suit insti-

tuted against it by a sister State; or to refuse to recognize within its limits those privileges and immunities of the citizens of its sister States guaranteed by the constitution; or to insist upon levying tariff duties on goods imported into its borders from other States in violation of the constitution or enforcing within its limits other laws declared by the Supreme Court to be violative of the constitution; or to insist upon waging war against other States, either members or not members of the union, or persistently threatening to do so or deliberately engaging in conduct that would provoke another State to make war upon it; or, in case of a civil war within the boundaries of a sister State, to insist, contrary to its constitutional duty, upon interfering in the contest and giving aid and comfort to one side or the other; or to acquire unconstitutionally territory which it refuses to surrender.

The presence of such a disturbing influence, if permanent, instead of strengthening our union, would merely weaken it, converting it from an institution established to insure peace into a breeder of discord and violence.

Of course it would be possible for the other nations composing the union to use force under such circumstances and by war, if necessary, to compel the recalcitrant State to observe its constitutional obligations. But to adopt such a remedy would be a direct contradiction of the fundamental principle upon which our union would be founded,—the preservation of peace.

Assuming that the disturbing element would desire

to remain in the union and enjoy its advantages (for otherwise it would substitute, in the place of disturbing the peace of the union, the simpler and more satisfactory procedure of withdrawing therefrom), it is possible to conceive of more consistent and law abiding remedies than the use of violence, and yet equally efficacious.

II

Modes of Discipline Suggested

Two methods of disciplining a recalcitrant member of the union suggest themselves, one economic in character, and the other political.

In the first place, the Congress may be authorized to declare an embargo upon part or all of the trade carried on between the offending nation and the other component nations of the union, to remain in force so long as in the judgment of the Congress might be necessary.

Such a measure would of course impose some degree of hardship upon the innocent States whose trade would thus be affected, but the burden would, theoretically at least, fall upon all alike since the embargo would apply alike to all, and even though unevenly distributed, the loss and inconvenience to none could be greater than the use of force and war as a remedy, since the very first measure in case of war would be the cessation of all trade with the offending State.

The Congress might not in some cases find it neces-

sary to lay an embargo upon all of the trade between the several States; the disciplinary measure might prove successful when applied to only a portion of it. And the Congress ought probably to be given a discretion in this respect. But whether the embargo be laid on some or all of the trade, so much of the trade as is prohibited ought to be prohibited to all the States alike. If State A is the offender and States B and C are two of the component nations, the Congress ought not to be permitted to prohibit all trade between A and B in certain articles, while allowing C to trade with A in the same articles.

In the second place, if the application of the embargo prove insufficient to deter the offending State, the Congress ought to be authorized to take the further step of expelling the offender from the union altogether. Indeed cases might be imagined in which it might be best to adopt this course in the first instance without waiting to apply the milder remedy of the embargo. On the whole it would appear to be wise to leave with the Congress a discretion as to which remedy shall be applied.

But upon the expulsion of a State, it would be fair and just and tend toward future peace to treat the State thus expelled, so far as its rights in the common property are concerned, in the same manner as a State which voluntarily secedes is treated, that is, to restore to it such territory (outside the seat of government) as it may have ceded to the union, and upon an accounting of the common assets and liabilities before the Su-

preme Court, to turn over to it such balance as may prove to be due.[1]

III

Check Upon Disciplinary Power of the Congress

Even though it be conceded that the Congress ought to possess the disciplinary powers mentioned, yet we might well hesitate to place so dangerous a power in the hands of a bare majority of either house. The power might easily be diverted into an engine of oppression and a means of obtaining trade advantages at the expense of a powerful competing rival.

It would seem therefore to be a proper precaution to demand that such action may be taken by the Congress only with the assent of a very considerable majority of the votes in each house.

Since such disciplinary action is in a sense extra-constitutional and (if it should result in the expulsion of a component nation) would really effect an essential change in the constitution of the government, if not in "the constitution," and since it has been provided that no nation shall be permitted to become a member of the union except upon a three-fourths vote in each house, it would seem appropriate to fix the same majority as necessary to pass either of the disciplinary measures suggested.[2]

[1] See Appendix, Const'n U. N., Art. X, Secs. 1, 2, 4.
[2] See Appendix, Const'n U. N., Art. X, Sec. 3.

CHAPTER XIX

ESTABLISHMENT OF THE CONSTITUTION

I

Number of Assenting Nations Necessary to Establish the Constitution

The Constitution of the United States required for its establishment the assent of nine, that is, three-fourths, of the thirteen then existing States, the same proportion required for the valid enactment of an amendment.

The conditions confronting the framers of the great American document differed radically from those which the nations of the world are facing today.

During some ten years previous to the adoption of the American Constitution, the thirteen States had been united politically under a league or alliance known as "the Articles of Confederation and Perpetual Union," which had definitely proved itself a failure as an instrument of government, but which nevertheless had united the States by a common bond. Those Articles expressly declared that no amendments thereto or changes therein should be effected without the unanimous consent of all the States. Changes had become absolutely essential, but it was feared with reason that

unanimous consent could not be obtained to make them. On the other hand, it was believed that unless the assent of more than a bare majority of the States was obtained, it would not only be dangerous to break up the existing union, but the success of the new one would be in peril. Hence the framers of the Constitution fixed upon the proportion of three-fourths of the States as being sufficient to insure its probable success.

In the case of our international constitution, however, the component nations have never been in union, save through temporary alliances between certain of them; and they are by no means so nearly on the same footing of equality as to wealth, population, or political or military strength, as were the American States at the adoption of their Constitution.

The questions,—which are the nations, and how many, whose assent ought to be regarded as necessary to the practical success of the union,—are questions of practical statesmanship, which must be left to the decision of our supposed conference of nations called to discuss the feasibility of some such plan of union as that advocated in these pages.

But for the sake of placing a complete scheme before the reader, it is suggested that no such union could meet with success if it do not include at least five of the eight existing "Great Powers," that is, Austria-Hungary, France, Germany, Great Britain, Italy, Japan, Russia, and the United States. Without these, or a majority of them, the union would be of little service in preventing wars, and other nations would be

apt, and indeed ought, to decline to surrender important sovereign rights in the creation of a federal government which would be unable to guarantee peace to them or the rest of the world.

On the other hand, the accession of these nations, or a majority of them, would secure also the assent of many others, since they would find within the union a protection against unjust aggressions they could not hope to find outside. Wars between nations, if not eliminated altogether, would be then reduced to a minimum, and the burdens of war taxes, armaments, national ill will, and human woe greatly alleviated.

Since there are eight of the "Great Powers," and the assent of five of these would suffice to insure the success of the union and to induce other nations to join it, the number of nations whose assent would be sufficient to establish the constitution between them has been tentatively fixed at eight, of which at least five must belong to the group of "Great Powers." [1]

II

Method of Ratification of the Constitution

The Constitution of the United States provided that

> "The ratification of the conventions [of the people] of nine States shall be sufficient for the establishment of this Constitution between the States so ratifying the same."

[1] See Appendix, Const'n U. N., Art. XI, Sec. 1.

In the political vocabulary of the United States, the term, "conventions of nine States," signifies that in each State there be called by the proper governmental authority a "convention of the people," the number of members of which, as well as their distribution and apportionment among the people and the rules governing their selection by the people, would be previously determined by law. The membership would usually consist of several hundred, elected by the people, one member to so many thousands of constituents.

In the American political theory, in the absence of a requirement that its work be submitted by a referendum to a vote of the people, the "convention of the people" is clothed with the ultimate sovereignty of the State and its people, and is superior to the ordinary legislative assembly which possesses merely a derivative or secondary sovereignty, or certain governmental powers.

Hence when the American Constitution provided for its own ratification by "conventions" in the several States, it was building its authority upon the strongest and deepest foundations known to American political science,—the ultimate sovereign will of the people of the several States. The document thus constituted the most solemn of all treaties,—a treaty not made through the ordinary or "derivative" sovereignty of the States as represented in their ordinary governmental action, but made by the "ultimate" sovereign will of the people themselves, rising supreme

over the "derivative" sovereignty or mere governmental agencies.

But amid few of the nations of the world do these political theories of the United States prevail. In Great Britain, for example, the theory is that the "ultimate" sovereignty rests not in the people as such, but in the Parliament, the most powerful and influential branch of which is the House of Commons, composed of representatives of the people. And in still other countries the theory is that the "ultimate" sovereignty is vested in the person of the sovereign.

It cannot be supposed therefore that our international compact could be made to depend upon actual ratification by the people of the several nations acceding to it, even though this were the strongest foundation on which to rest it.

It would nevertheless be desirable, if possible, to place the status of this solemn compact,—partaking, as it does, of the nature of a fundamental law involving profound changes in the existing constitution of each component State,—upon a distinctly higher plane than that occupied by ordinary treaties. Hence it becomes necessary to seek out the foundation for it that would be recognized by all nations in common as the strongest and deepest.

It must of course be assented to by the constitutional treaty-making power of each nation (after such changes in its existing constitution as might be rendered needful by the adoption of this international compact); but its binding and supreme obligation ought to be

recognized and emphasized by making it a condition of ratification that, besides the assent of the ordinary treaty-making power of each component nation, the sovereign or chief executive of each shall solemnly pledge in writing the honor of his nation as well as of himself and his successors to the faithful and honest observance of the compact in all its parts so long as the nation remains in the union, leaving all disputes to be settled peaceably in the modes indicated therein.

If it be argued that such a pledge is implied in the making of every treaty, and that it would add nothing to the sanctity of this compact, it may be replied that while this is true in theory and viewing treaties from a high moral plane unaffected by pressing personal or public interests, it is also true that in practice national governments have frequently violated treaties most flagrantly when they have conflicted with supposed national interests, and have not regarded either their own or their nation's honor as sullied thereby. The mere implication of the pledge has proved insufficient to deter in many cases.

But may it not reasonably be supposed that an express and solemn pledge of the honor of the nation and its rulers would prove a very considerable obstacle and stumbling block to the violation of this compact, not only because of its peculiar nature and the special sanctity thrown around it, but also because, even should the rulers themselves see a supposed national profit in violating it, the people feeling their own honor pub-

licly pledged, would be more likely to condemn and oppose the violation? It would thus cease to be a mere governmental agreement and would become a national one in the fullest sense.[1]

[1] See Appendix, Const'n U. N., Art. XI, Sec. 2.

APPENDIX

Constitution of the United States
and
Tentative Constitution of the United Nations
in
Parallel Columns

APPENDIX

U. S. CONSTITUTION

We the people of the United States, in order to form a more perfect Union, establish justice, insure domestic tranquillity, provide for the common defense, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this Constitution for the United States of America.

ARTICLE I

Section 1. All legislative powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

Section 2. The House of Representatives shall be composed of members chosen every second year by the people of the several States, and the electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State legislature.

Representatives and direct taxes shall be apportioned among the several States which may be in-

U. N. CONSTITUTION

ARTICLE I

LEGISLATIVE DEPARTMENT, ITS ORGANIZATION AND POWERS

Section 1. All legislative powers herein granted shall be vested in a Congress of the United Nations, which shall consist of a Senate and House of Delegates.

[Ante, pp. 32 et seq.]

Section 2. 1. The House of Delegates shall be composed of delegations representing the several component nations, chosen as the laws of each nation shall direct.

[Ante, pp. 50 et seq.]

2. Each nation shall be represented in the House of Delegates by votes in proportion to the pop-

U. S. CONSTITUTION

cluded within this Union, according to their respective numbers, which shall be determined by adding to the whole number of free persons, including those bound to service for a term of years, and excluding Indians not taxed, three-fifths of all other persons. [Now modified by Amendment XIV, Sec. 2.] The actual enumeration shall be made within three years after the first meeting of the Congress of the United States, and within every subsequent term of ten years, in such manner as they shall by law direct. The number of Representatives shall not exceed one for every thirty thousand, but each State shall have at least one Representative, and until such enumeration shall be made, the State of New Hampshire shall be entitled to choose three, Massachusetts eight, Rhode Island and Providence Plantations one, Connecticut five, New York six, New Jersey four, Pennsylvania eight, Delaware one, Maryland six, Virginia ten, North Carolina five, South Carolina five, and Georgia three.

The House of Representatives shall choose their speaker and other officers; and shall have the sole power of impeachment.

[The President, Vice-President, and all civil officers of the United

U. N. CONSTITUTION

ulation of all its territories, which shall be determined by adding to the whole number of white persons one-third of all other persons:—provided that persons of full Japanese blood shall, for the purposes of this section, be counted as white persons. The actual enumeration shall be made within five years after the first meeting of the Congress of the United Nations, and within every subsequent term of ten years, in such manner as they shall by law direct. The number of votes to which each nation shall be entitled in the House of Delegates shall not exceed one for every four millions of population, or fraction thereof in excess of fifty per centum, estimated in the manner before mentioned, but each nation shall have at least one vote. Until such enumeration shall be made, each nation shall be entitled to votes on the basis mentioned, in accordance with the last official census taken by such nation prior to its ratification of this constitution. Each delegation shall cast the votes of its nation as a whole or in such other manner as the nation may by its laws direct.

[Ante, pp. 33 et seq.]

3. The House of Delegates shall choose its presiding and other officers.

U. S. CONSTITUTION	U. N. CONSTITUTION
States shall be removed from office on impeachment for, and conviction of, treason, bribery, or other high crimes and misdemeanors.—Article II, Sec. 4.]	[See *Article III, Sec. 2, cl. 2.*]
Section 3. The Senate of the United States shall be composed of two Senators from each State elected by the people thereof for six years; and each Senator shall have one vote.	Section 3. 1. The Senate of the United Nations shall be composed of delegations from each component nation chosen as the laws of each nation shall direct. Each delegation shall have two votes, which shall be cast as a whole or in such other manner as each nation may by its laws direct. [Ante, pp. 46 et seq.]
The electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State legislature. [Amendment XVII.]	
Immediately after they shall be assembled in consequence of the first election, they shall be divided as equally as may be into three classes. The seats of the Senators of the first class shall be vacated at the expiration of the second year, of the second class at the expiration of the fourth year, and of the third class at the expiration of the sixth year, so that one-third may be chosen every second year. . . .	
The Vice-President of the United States shall be President of the Senate, but shall have no vote unless they be equally divided.	
The Senate shall choose their other officers; and also a President *pro tempore,* in the absence	2. The Senate shall choose its presiding and other officers.

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of the Vice-President, or when he shall exercise the office of President of the United States.	
The Senate shall have the sole power to try all impeachments. When sitting for the purpose, they shall be on oath or affirmation. When the President of the United States is tried, the Chief Justice shall preside; and no person shall be convicted without the concurrence of two-thirds of the members present.	
Judgment in cases of impeachment shall not extend further than to removal from office, and disqualification to hold and enjoy any office of honor, trust or profit under the United States; but the party convicted shall nevertheless be liable and subject to indictment, trial, judgment, and punishment, according to law.	[See ante, pp. 60 et seq.]
[For terms of office of Representatives, see *Article I, Sec. 2, cl. 1,* and of Senators, see *Article I, Sec. 3, cl. 1; Amendment XVII.*]	Section 4. 1. The terms of office and the number of the members, of the delegations in each house shall be at the will of the respective nations they represent, as directed by its laws. Each nation shall also regulate by its own laws the eligibility of its delegates in either house and the recall of each or all of them.
[For eligibility of representatives, see *Article I, Sec. 2, cl. 2,* and of Senators, see *Article I, Sec. 3, cl. 3.*]	[Ante, pp. 50 et seq.]
[When vacancies shall happen in the representation (*i.e.,* in the lower House, and now, by the Seventeenth Amendment in the Senate also) from any State, the executive authority thereof shall	

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issue writs of election to fill such vacancies.—Article I, Sec. 2, cl. 4; Sec. 3, cl. 2; Amendment XVII.]	
[The Congress shall assemble at least once in every year, and such meeting shall be on the first Monday in December, unless they shall by law appoint a different day.—Article I, Sec. 4, cl. 2.]	2. The Congress shall remain in perpetual session, subject to such recess, not exceeding four months at one time, as the two houses shall from time to time agree upon. [Ante, p. 53.]
[Neither House, during the session of Congress, shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which the two houses shall be sitting.—Article I, Sec. 5, cl. 4.]	3. Neither house shall, without the consent of the other, adjourn for more than one week, nor to any other place than that in which the two houses shall be sitting. [Ante, p. 53.]
Section 5. Each House shall be the judge of the elections, returns, and qualifications of its own members; and a majority of each shall constitute a quorum to do business; but a small number may adjourn from day to day, and may be authorized to compel the attendance of absent members, in such manner and under such penalties as each House may provide.	Section 5. 1. A majority of the votes in each house shall constitute a quorum to do business; but a smaller number may adjourn from day to day.
Each House may determine the rules of its proceedings, punish its members for disorderly behavior, and, with the concurrence of two-thirds, expel a member.	2. Each house may determine the rules of its proceedings, punish delegates for disorderly behavior, and, with the concurrence of two-thirds of the votes, expel a delegate. [Ante, p. 65.]
Each House shall keep a journal of its proceedings, and from time to time publish the same, excepting such parts as may require	3. Each house shall keep a journal of its proceedings, and from time to time publish the same in such language or lan-

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secrecy; and the yeas and nays of the members of either House on any question shall, at the desire of one-fifth of those present, be entered on the journal.	guages as the Congress may by law direct, excepting such parts as may require secrecy; and the votes of the delegations in either house on every question (save on a question of adjournment) shall be entered on the journal, unless the Congress shall by law otherwise direct.
	[Ante, p. 65.]
Section 6. The Senators and Representatives shall receive a compensation for their services to be ascertained by law, and paid out of the treasury of the United States.	Section 6. 1. The delegations in either house shall receive, in proportion to the number of votes each delegation is entitled to cast, compensation for their services to be ascertained by law, and paid out of the treasury of the United Nations.
	[Ante, pp. 53 et seq.]
They shall in all cases, except treason, felony, and breach of the peace, be privileged from arrest during their attendance at the session of their respective Houses, and in going to and returning from the same; and for any speech or debate in either House, they shall not be questioned in any other place.	2. The members of each delegation shall have the privileges and immunities of ambassadors to a foreign State, while passing through the territories of other component nations. They shall in all cases, except felony and breach of the peace, be privileged from arrest during their attendance at the session of their respective houses, and in going to and returning from the same; and for any speech or debate in either house, they shall not be questioned in any other place than the State they respectively represent, in accordance with its laws.
	[Ante, pp. 54, 55.]
No Senator or Representative shall, during the time for which he was elected, be appointed to	

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any civil office under the authority of the United States, which shall have been created, or the emoluments whereof shall have been increased, during such time; and no person holding any office under the United States shall be a member of either House during his continuance in office.

Section 7. All bills for raising revenue shall originate in the House of Representatives; but the Senate may propose or concur with amendments as on other bills.

Every bill which shall have passed the House of Representatives and the Senate, shall, before it becomes a law, be presented to the President of the United States. If he approve he shall sign it, but if not he shall return it, with his objections, to that House in which it shall have originated, who shall enter the objections at large on their journal, and proceed to reconsider it. If after such reconsideration two-thirds of that House shall agree to pass the bill, it shall be sent, together with the objections, to the other House, by which it shall likewise be reconsidered, and if approved by two-thirds of that House, it shall become a law. But in all such cases the votes of both Houses shall be determined by yeas and nays, and the names of the persons voting for and against the bill shall be entered on the journal of each House re-

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Section 7. No law for raising revenue or for the regulation of commerce shall continue in force for a longer term than ten years from its passage.

[Ante, pp. 55 et seq.]

Section 8. 1. In order that any measure proposed in either house shall be binding on the component nations, it shall first have passed each house by a majority of the votes present. But if any component nation shall entertain a doubt as to the constitutionality of a measure thus passed on the ground that it impairs the reserved powers of the component nations, such nation, through its delegation in each house, may, within thirty days after it has been so passed, give notice to the Congress that it is deliberating whether it shall veto the measure. If, within the time mentioned, no nation shall have given such notice, or if, within one year from such passage, the nation or nations giving such notice shall not have vetoed it by a statement to that effect entered on the journal of each house, the measure shall become binding.

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spectively. If any bill shall not be returned by the President within ten days (Sundays excepted) after it shall have been presented to him, the same shall be a law, in like manner as if he had signed it, unless the Congress by their adjournment prevent its return, in which case it shall not be a law.

Every order, resolution, or vote to which the concurrence of the Senate and House of Representatives may be necessary (except on a question of adjournment) shall be presented to the President of the United States; and before the same shall take effect, shall be approved by him, or being disapproved by him, shall be repassed by two-thirds of the Senate and House of Representatives, according to the rules and limitations prescribed in the case of a bill.

Section 8. The Congress shall have power

To lay and collect taxes, duties, imposts, and excises, to pay the debts and provide for the common defense and general welfare of the United States; but all duties, imposts and excises shall be uniform throughout the United States;

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2. If, after such notice and within one year from such passage, a nation shall veto the measure on the ground mentioned, it may be voted on again in each house and if three-fourths of all the votes of each house shall be cast therefor, it shall become binding, notwithstanding the veto; if not, it shall not be binding. Periods of Congressional recess shall not be estimated in the thirty days or in the year herein referred to.

[Ante, pp. 57 et seq.]

Section 9. The Congress shall have power

1. To lay and collect taxes upon land, in order to pay the debts of the United Nations, provide for their common defense, and execute the powers herein granted to them. All taxes upon land shall be uniform throughout the territories of the several component nations;

[Ante, pp. 69 et seq.]

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To borrow money on the credit of the United States;	2. To borrow money on the credit of the United Nations, through the issuance of bonds [and to provide by law for the issuance of paper currency]; [Ante, pp. 74 et seq.]
To coin money, regulate the value thereof and of foreign coin, and fix the standard of weights and measures;	[3. To coin money, regulate the value thereof and of foreign coin, and fix the standard of weights and measures]; [Ante, pp. 76, 78.]
To provide for the punishment of counterfeiting the securities and current coin of the United States;	4. To provide for the punishment of counterfeiting the securities, [coin and paper currency] of the United Nations; [Ante, pp. 77, 78.]
To regulate commerce with foreign nations, and among the several States, and with the Indian tribes; [The migration or importation of such persons as any of the States now existing shall think proper to admit, shall not be prohibited by the Congress prior to the year 1808, but a tax or duty may be imposed on such importation, not exceeding ten dollars for each person.—Article I, Sec. 9, cl. 1.]	5. To regulate international commerce by uniform laws; but nothing herein shall be construed to give to the Congress the power to regulate immigration, emigration, or the migration of persons to or from a component State; [Ante, pp. 79 et seq.]
To establish an uniform rule of naturalization and uniform laws on the subject of bankruptcies throughout the United States;	[See ante, pp. 97 et seq., 159 et seq.]
To establish post offices and post roads;	[See *Article IV, Sec. 1, cl. 2.*]
	6. To regulate international postal and other communication by uniform laws; [Ante, pp. 85 et seq.]
To promote the progress of science, and useful arts, by securing for limited times to authors and inventors the exclusive right to	[7. To provide for international copyrights and patent rights]; [Ante, pp. 87, 88.]

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their respective writings and discoveries;	
To constitute tribunals inferior to the Supreme Court;	8. To constitute tribunals inferior to the Supreme Court; [Ante, pp. 88 et seq.]
To define and punish piracies and felonies committed on the high seas, and offenses against the Law of Nations;	9. To define and provide for the punishment and redress of offenses and private wrongs (other than breaches of contract) committed on the high seas, and offenses against the Law of Nations; [Ante, pp. 92, 93.]
To declare war, grant letters of marque and reprisal, and make rules concerning captures on land and water;	10. To declare war, and make rules concerning captures on land and water; [Ante, pp. 93 et seq.]
To raise and support armies, but no appropriation of money to that use shall be for a longer term than two years;	11. To raise and support armies; but no appropriation of money to that use shall be for a longer term than two years;
To provide and maintain a navy;	12. To provide and maintain a navy.
To make rules for the government and regulation of the land and naval forces;	13. To make rules for the government and regulation of the land and naval forces of the United Nations; [Ante, pp. 93 et seq.]
To provide for calling forth the militia to execute the laws of the Union, suppress insurrections, and repel invasions;	14. To provide for calling forth the armed forces (including the militia) of the several component nations, in order to execute the laws of the union, suppress insurrections against the government of the United Nations, and repel invasions;
To provide for organizing, arming, and disciplining the militia, and for governing such part of them as may be employed in	15. To provide for governing such part of the armed forces of the component nations as may be employed in the service of the

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the service of the United States, reserving to the States, respectively, the appointment of the officers, and the authority of training the militia according to the discipline prescribed by Congress;

To exercise exclusive legislation in all cases whatsoever, over such district (not exceeding ten miles square) as may, by cession of particular States and the acceptance of Congress, become the seat of the government of the United States, and to exercise like authority over all places purchased by the consent of the legislature of the State in which the same shall be for the erection of forts, magazines, arsenals, dock yards, and other needful buildings;

To make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the government of the United States, or in any department or officer thereof.

ARTICLE II

Section 1. The executive power shall be vested in a President of the United States of America.

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United Nations, reserving to the nations, respectively, the appointment of the officers and the authority of training the forces;

[Ante, pp. 93 et seq.]

16. To exercise exclusive legislation in all cases whatsoever, over such district (not exceeding fifty square miles) as may, by cession of particular nations and the acceptance of the Congress, become the seat of the government of the United Nations, and to exercise like authority over all places purchased by the consent of the State in which the same shall be, for the erection of forts, magazines, arsenals, dock yards, and other needful buildings; and

[Ante, pp. 95, 96.]

17. To make all laws which shall be reasonably necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this constitution in the government of the United Nations, or in any department or officer thereof.

[Ante, pp. 96, 97.]

ARTICLE II

EXECUTIVE DEPARTMENT, ITS ORGANIZATION AND POWERS

Section 1. 1. The executive power of the United Nations shall be vested in a Council of Ministers, composed of members

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He shall hold his office during the term of four years, and, together with the Vice-President, chosen for the same term, be elected, as follows:

Each State shall appoint in such manner as the legislature thereof may direct, a number of electors, equal to the whole number of Senators and Representatives to which the State may be entitled in the Congress, but no Senator or Representative, or person holding an office of trust or profit under the United States, shall be appointed an elector.

[The electors shall meet in their respective States, and vote by ballot for President and Vice-President, one of whom, at least, shall not be an inhabitant of the same State with themselves; they shall name in their ballots the person voted for as President, and in distinct ballots the person voted for as Vice-President, and they shall make distinct lists of

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of the Congress, and consisting of a prime minister and such others, appointed by him and removable at his pleasure, as the Congress shall by law direct, provided that not more than two of the council shall be of the same nation.

[Ante, pp. 100 et seq.]

2. The prime minister shall hold his office until he be recalled by a resolution passed by a majority of all the votes of either house of the Congress, unless the position fall vacant by his death, resignation, or recall from the Congress, by the nation he represents. He shall be chosen as follows:

[Ante, pp. 111, 112.]

3. A nominating committee, composed of eight Senators and eight Delegates, elected by their respective houses in accordance with the rules of each house, who shall choose their own chairman and prescribe the times and places of their own meetings, shall nominate to each house three members of the Congress for the office of prime minister. Upon the receipt of such nominations, each house shall vote by ballot upon the nominees according to the rules prescribed by the Congress. If none of those named shall receive a majority of all the votes in each house, another committee shall be elected as before, who shall nominate three other members of the Congress. These shall be voted for in like

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all persons voted for as President, and of all persons voted for as Vice-President, and of the number of votes for each, which lists they shall sign and certify, and transmit sealed to the seat of government of the United States, directed to the President of the Senate; the President of the Senate shall, in presence of the Senate and House of Representatives, open all the certificates and the votes shall then be counted; the person having the greatest number of votes for President shall be the President, if such number be a majority of the whole number of electors appointed; and if no person have such majority, then from the persons having the highest number not exceeding three on the list of those voted for as President, the House of Representatives shall choose immediately, by ballot, the President. But in choosing the President, the votes shall be taken by States, the representative from each State having one vote; a quorum for this purpose shall consist of a member or members from two-thirds of the States, and a majority of all the States shall be necessary to a choice. And if the House of Representatives shall not choose a President whenever the right of choice shall devolve upon them before the fourth day of March, next following, then the Vice-President shall act as President, as in the case of the

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manner and upon like conditions as the previous nominees, and so on until a prime minister be chosen by a majority of all the votes of both houses of the Congress.

[Ante, pp. 106 et seq.]

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death or other constitutional disability of the President. The person having the greatest number of votes as Vice-President shall be the Vice-President, if such number be a majority of the whole number of electors appointed, and if no person have a majority, then from the two highest numbers on the list, the Senate shall choose the Vice-President; a quorum for the purpose shall consist of two-thirds of the whole number of Senators, and a majority of the whole number shall be necessary to a choice. But no person constitutionally ineligible to the office of President shall be eligible to that of Vice-President of the United States.—Amendment XII.]

The Congress may determine the time of choosing the electors and the day on which they shall give their votes, which day shall be the same throughout the United States.

No person except a natural born citizen, or a citizen of the United States at the time of the adoption of this Constitution, shall be eligible to the office of President; neither shall any person be eligible to that office who shall not have attained to the age of thirty-five years, and been fourteen years a resident within the United States.

In case of the removal of the President from office, or of his death, resignation, or inability to discharge the powers and duties

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of the said office, the same shall devolve on the Vice-President, and the Congress may by law provide for the case of removal, death, resignation, or inability, both of the President and Vice-President, declaring what officer shall then act as President, and such officer shall act accordingly, until the disability be removed, or a President shall be elected.

The President shall, at stated times, receive for his services, a compensation, which shall neither be increased nor diminished during the period for which he shall have been elected, and he shall not receive within that period any other emolument from the United States or any of them.

Before he enter on the execution of his office, he shall take the following oath or affirmation: "I do solemnly swear (or affirm) that I will faithfully execute the office of President of the United States, and will to the best of my ability, preserve, protect, and defend the Constitution of the United States."

Section 2. The President shall be Commander-in-Chief of the army and navy of the United States, and of the militia of the several States, when called into the actual service of the United States; he may require the opin-

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Section 2. The prime minister and the subordinate ministers shall receive from the treasury of the United Nations such compensation, in addition to that to which they may be entitled as members of their respective delegations, as shall be prescribed by law; nor shall they receive during the period of their ministry any other emolument from the United Nations or any of them.

[Ante, pp. 112, 113.]

[See *Article VIII, Sec. 2.*]

Section 3. The prime minister, acting through the council or the appropriate minister, as the law shall direct, shall

[See ante, pp. 114 et seq.]

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ion in writing of the principal officer in each of the executive departments, upon any subject relating to the duties of their respective offices, and he shall have power to grant reprieves and pardons for offenses against the United States, except in cases of impeachment;

He shall have power, by and with the advice and consent of the Senate, to make treaties, provided two-thirds of the Senators present concur, and he shall nominate, and by and with the advice and consent of the Senate, shall appoint ambassadors, other public ministers, and consuls, judges of the Supreme Court, and all other officers of the United States, whose appointments are not herein otherwise provided for, and which shall be established by law; but the Congress may by law vest the appointment of such inferior officers, as they think proper in the President alone, in the courts of law, or in the heads of departments.

The President shall have power to fill up all vacancies that may happen during the recess of the Senate, by granting commissions which shall expire at the end of their next session.

Section 3. He shall from time to time give to the Congress information of the state of the union, and recommend to their consideration such measures as he shall judge necessary and ex-

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1. Grant reprieves, commutations of sentence and pardons for offenses against the United Nations;

[Ante, p. 115.]

2. Make treaties with nations not members of this union, by and with the advice and consent of the Congress, concerning matters to which the constitutional powers of the United Nations shall extend, provided two-thirds of the votes present in each house concur.

[Ante, pp. 115 et seq.]

3. Appoint and remove, subject to such regulations of the civil, military, and naval service as may be prescribed by law, ambassadors and all other executive officers of the United Nations, whose appointments are not herein otherwise provided for, and which shall be established by law; but the Congress may by law vest the appointment of inferior court officers in the courts of law;

[Ante, pp. 118 et seq.]

[See ante, pp. 122, 123.]

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pedient; he may, on extraordinary occasions, convene both Houses, or either of them, and in case of disagreement between them with respect to the time of adjournment, he may adjourn them to such time as he shall think proper;	
He shall receive ambassadors and other public ministers;	4. Receive ambassadors and other public ministers; [Ante, pp. 120, 121.]
He shall take care that the laws be faithfully executed;	5. Execute and enforce the laws of the United Nations; [Ante, p. 121.]
And shall commission all the officers of the United States.	6. Commission all the executive officers of the United Nations; but the judicial and legislative officers of the United Nations shall be commissioned as the laws of the States appointing them shall direct. [Ante, p. 122.]
Section 4. The President, Vice-President, and all civil officers of the United States, shall be removed from office on impeachment for, and conviction of, treason, bribery, or other high crimes and misdemeanors.	[See *Article III, Sec. 2, cl. 2.*]
ARTICLE III	ARTICLE III
	Judiciary Department, Its Organization and Powers
Section 1. The judicial power of the United States shall be vested in one Supreme Court, and in such inferior courts as the Congress may from time to time ordain and establish.	Section 1. The judicial power of the United Nations shall be vested in one Supreme Court, and in such courts of the component nations or in such inferior international courts as the

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The judges, both of the Supreme and inferior courts shall hold their offices during good behavior; and shall, at stated times, receive for their services, a compensation which shall not be diminished during their continuance in office.

[See *Article II, Sec. 4.*]

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Congress may provide or establish.

[Ante, pp. 88 et seq., 129 et seq.]

Section 2. 1. The judges, both of the Supreme and inferior international courts, shall be appointed by the executive authority of the State they respectively represent, or wherein they are respectively to perform their judicial functions, in such manner as shall be prescribed by the laws of each State; shall hold their offices during good behavior; and shall, at stated times, receive from the treasury of the United Nations for their services a compensation which shall not be diminished during their continuance in office.

[Ante, pp. 125 et seq.]

2. A judge, either of the Supreme or an inferior international court, may be removed from office by the Congress for extortion, bribery, corruption, or other high crime or misdemeanor.

[Ante, pp. 62 et seq.]

Section 3. 1. The Supreme Court shall consist of such equal number of representatives from each of the component nations as the Congress shall by law determine.

[Ante, pp. 130 et seq.]

2. Immediately after they shall be assembled in consequence of the first appointments, they shall be divided by lot as equally as may be into three sec-

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tions. The first section shall hear and finally determine all controversies properly coming before the court, which shall affect ambassadors, other public ministers, or consuls accredited to the United Nations or to any of them; or which shall arise between component nations, or between the United Nations and one or more nations, either members or not members of this union; or between one or more of the component nations and nations not members of this union; or between nations not members of this union. The second section shall hear and finally determine all civil cases, properly coming before the court, wherein private persons are litigant on one or both sides. The third section shall hear and finally determine all criminal cases properly coming before the court.

[Ante, pp. 132 et seq.]

3. If a party to the litigation is dissatisfied with the decision of any section that the case is or is not triable therein, he may appeal from such decision to the entire Supreme Court, all the sections sitting together; and a like appeal shall lie in case of conflicting decisions of several sections upon questions involving the interpretation of this constitution, or of the laws or treaties of the United Nations, or of the treaties of the several component nations made or which shall be

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made with each other or with nations not members of this union.

[Ante, pp. 134 et seq.]

4. Immediately after the first division of the Supreme Court into sections, the judges in each section shall draw lots for their respective positions or order of official seniority therein. The judge drawing the first place in his section shall be the presiding judge thereof until removed by death, resignation, action of the Congress, or promotion to a higher section, in which case his place shall be taken by the judge next in order of official seniority. The presiding judge of the first section shall be the chief justice of the Supreme Court.

[Ante, pp. 133, 134.]

5. When a vacancy occurs in any section, all judges in that section holding positions below the vacant place shall advance one degree in official seniority, leaving the last position in such section vacant, which vacancy, in case of the first two sections, shall be filled by promotion of the presiding judge of the section next below; and, in case of the third section, by the appointment of another judge by the executive authority of that nation the loss of whose representative on the court inaugurated the series of vacancies.

[Ante, pp. 133, 134.]

Section 2. The judicial power shall extend

Section 4. The judicial power of the United Nations shall extend

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To all cases, in law and equity, arising under this Constitution, the laws of the United States, and treaties made or which shall be made under their authority;	1. To all cases arising under this constitution, or under the laws or treaties of the United Nations, or under treaties made or which shall be made by the respective component nations. In any justiciable case arising under this clause, when such a course is necessary to a proper decision, the court having jurisdiction of the case, shall for the purposes of its decision, disregard as unconstitutional any law or treaty of the United Nations which violates this constitution, and shall in like manner disregard any law or treaty of a component nation which violates this constitution or the laws or treaties of the United Nations which shall be made in pursuance thereof. Provided, that neither the Supreme Court nor any section thereof shall thus disregard any law or treaty unless three-fourths of the judges comprising the court or section shall have so determined, but shall enforce the same. [Ante, pp. 136 et seq.]
To all cases affecting ambassadors, other public ministers, and consuls;	2. To all cases affecting ambassadors, other public ministers and consuls accredited to the United Nations or to any of them; [Ante, pp. 142, 143.]
To all cases of admiralty and maritime jurisdiction;	3. To all cases of offenses and private wrongs (other than breaches of contract) committed on the high seas; [Ante, pp. 143 et seq.]

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To controversies to which the United States shall be a party;	4. To controversies to which the United Nations shall be a party; [Ante, pp. 145, 146.]
To controversies between two or more States; between a State and citizens of another State; between citizens of different States; between citizens of the same State claiming lands under grants of different States; and between a State, or the citizens thereof, and foreign States, citizens or subjects.	5. To controversies between two or more component nations; [Ante, p. 146.] [See ante, pp. 147 et seq.]
	6. To controversies between component nations and nations not members of this union; and [Ante, p. 147.]
	7. To controversies between two or more nations not members of this union, but consenting to the exercise of such jurisdiction, provided, that no department of the government of the United Nations shall undertake to enforce a decision rendered in such circumstances. [Ante, pp. 147, 148.]
In all cases affecting ambassadors, other public ministers, and consuls, and those in which a State shall be party, the Supreme Court shall have original jurisdiction.	Section 5. 1. In all cases affecting ambassadors, other public ministers, and consuls accredited to the United Nations, or to any of them, and those in which any nation shall be party, the Supreme Court shall have original jurisdiction. [Ante, pp. 150 et seq.]
In all the other cases before mentioned, the Supreme Court shall have appellate jurisdiction, both as to law and fact, with such exceptions, and under such regulations as the Congress shall make.	2. In all the other cases before mentioned the Supreme Court shall have appellate jurisdiction, both as to law and fact, upon appeal from inferior international courts, and from the courts of the component nations when exercising the judicial power of the

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	United Nations, with such exceptions and under such regulations as the Congress shall make. [Ante, p. 153.]
The trial of all crimes, except in cases of impeachment, shall be by jury; and such trial shall be held in the State where the said crimes shall have been committed; but when not committed within any State, the trial shall be at such place or places as the Congress may by law have directed.	[See *Article IV, Sec. 3, cl. 4.*]
Section 3. Treason against the United States shall consist only in levying war against them, or in adhering to their enemies, giving them aid and comfort. No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or on confession in open court.	[See *Article IV, Sec. 1, cl. 3.*]
The Congress shall have power to declare the punishment of treason, but no attainder of treason shall work corruption of blood or forfeiture except during the life of the person attainted.	
[The judicial power of the United States shall not be construed to extend to any suit at law or equity commenced or prosecuted against one of the United States by citizens of another State, or by citizens of subjects of any foreign State.—Amendment XI.]	Section 6. The judicial power of the United Nations shall not extend to any original suit instituted by private persons against a component nation; nor to any personal proceeding against the sovereign, chief executive, or any member of the ministry or cabinet of a component nation. [Ante, pp. 154, 155.]

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The Congress shall have power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States.—Article IV, Sec. 3, cl. 2.

[All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside.—Amendment XIV, Sec. 1.

The Congress shall have power to establish an uniform rule of naturalization.—Article I, Sec. 8, cl. 4.

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ARTICLE IV

LIMITATIONS UPON THE POWERS OF THE UNITED NATIONS

Section 1. 1. No territory other than that referred to in the sixteenth clause of the ninth section of the first Article of this constitution shall be acquired in any manner by the United Nations in time of peace; nor in war, except through temporary military occupation, to be returned at the end of the war to the nation from which it shall have been taken, unless the Congress, three-fourths of all the votes of each house concurring, shall decide that the general peace will be subserved by granting the occupied territory to one or more of the component nations, or to a nation not a member of this union, or by making of it an independent State.

[Ante, pp. 157 et seq.]

2. No such status as "citizenship of the United Nations" shall be recognized, except in case of persons born in the seat of the government of the United Nations, who have never been citizens of any State, or citizens of a component State permanently domiciled in such district at the time of the cession thereof to the United Nations.

[Ante, pp. 97 et seq., 159 et seq.]

3. No such crime as "treason

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[See *Article III, Sec. 3.*]	against the United Nations" shall be recognized. [Ante, p. 160.]
No capitation, or other direct, tax shall be laid, unless in proportion to the census or enumeration hereinbefore directed to be taken. No tax or duty shall be laid on articles exported from any State.—Article I, Sec. 9, cl. 4, 5.	4. No tax of any description shall be laid by the United Nations, other than taxes upon land. [Ante, pp. 160, 161.]
No money shall be drawn from the treasury, but in consequence of appropriations made by law; and a regular statement and account of receipts and expenditures of all public money shall be published from time to time.—Article I, Sec. 9, cl. 7.	5. No money shall be drawn from the treasury of the United Nations but in consequence of appropriations made by law; and a regular statement and account of receipts and expenditures of all public money shall be published from time to time. [Ante, p. 162.]
	6. No appropriation of public money shall be made for purposes other than those provided for in this constitution; nor for bounties or subsidies other than reasonable pensions for aged or incapacitated public servants of the United Nations. [Ante, pp. 162, 163.]
No preference shall be given by any regulation of commerce or revenue to the ports of one State over those of another, nor shall vessels bound to, or from, one State be obliged to enter, clear, or pay duties in another.—Article I, Sec. 9, cl. 6.	7. No preference shall be given by the United Nations to the ports or trading centers, to the ships or other vehicles of commerce, to the persons engaged therein, or to the highways of commerce of one component nation over those of another. [Ante, pp. 163 et seq.]
No title of nobility shall be granted by the United States.—Article I, Sec. 9, cl. 8.	8. No title or order of nobility or of privilege shall be granted or created by the United Nations. [Ante, pp. 165, 166.]

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And no person holding any office of profit or trust under them shall, without the consent of the Congress, accept of any present, emolument, office, or title, of any kind whatever, from any king, prince, or foreign State.—Article I, Sec. 9, cl. 8.

The privilege of the writ of *habeas corpus* shall not be suspended, unless when in case of rebellion or invasion the public safety may require it.—Article I, Sec. 9, cl. 2.

Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof.—Amendment I.

No religious test shall ever be required as a qualification to any office or public trust under the United States—Article VI.

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9. No person while holding any office of profit or trust under the United Nations, shall, without the consent of the Congress, accept of any present, emolument, office, or title, of any kind, whatever, from any king, ruler, or State.

[Ante, p. 167.]

Section 2. 1. It is the right of any person imprisoned under or by color of the authority of the United Nations, or contrary to the laws or treaties thereof, or because of the alleged exercise of a right, or omission or violation of a duty, claimed to exist under the constitution, laws, or treaties of the United Nations, or under a treaty of a component nation or under the Law of Nations, to apply immediately to any court authorized by the Congress to inquire of and determine the legality of the imprisonment, and to secure a prompt discharge if the imprisonment be illegal. This right shall never be suspended by the Congress unless when, in case of rebellion or invasion, the public safety may require it.

[Ante, pp. 168, 169.]

2. The Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof, or requiring any religious test as a qualification to any office or public trust under the United Nations, or imposing civil disabilities upon any person because of his religious belief;

[Ante, p. 170.]

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[Congress shall make no law] abridging the freedom of speech and of the press.—Amendment I.	3. Nor any law abridging the freedom of speech and of the press in any component State to a greater extent than is customary by law or usage in such State; [Ante, pp. 170, 171.]
[Congress shall make no law] abridging the right of the people peaceably to assemble, and to petition the government for a redress of grievances.—Amendment I.	4. Nor any law abridging the right of the people peaceably to assemble, and to petition the government for a redress of grievances. [Ante, p. 172.]
A well regulated militia, being necessary to the security of a free State, the right of the people to keep and bear arms shall not be infringed.—Amendment II.	5. The United Nations shall not infringe the right of the people to keep and bear arms. [Ante, pp. 172, 173.]
No soldier shall, in time of peace, be quartered in any house without the consent of the owner, nor in time of war, but in a manner to be prescribed by law.—Amendment III.	6. No soldier shall, in time of peace, be quartered by the United Nations in any house without the consent of the owner, nor in time of war, but in a manner to be prescribed by law. [Ante, pp. 173, 174.]
Nor shall private property be taken for public use without just compensation.—Amendment V.	7. No person's private property shall be taken by or under authority of the United Nations for public use without just compensation. [Ante, pp. 175 et seq.]
No person shall be deprived of life, liberty, or property, without due process of law.—Amendment V.	8. No person shall be deprived by the United Nations of life, liberty, or property, but after due opportunity to be heard in a regular, orderly, and appropriate proceeding; nor be denied by them the equal protection of the laws. [Ante, pp. 177 et seq.]
No bill of attainder or ex post	Section 3. 1. No law convict-

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facto law shall be passed.—Article I, Sec. 9, cl. 3.

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the persons or things to be seized.—Amendment IV.

No person shall be held to answer for a capital or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger, nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself.—Amendment V.

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law.—Amendment VI.

The trial of all crimes, except

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ing and punishing a person for alleged offenses, nor any ex post facto law punishing crime, shall be passed by the Congress.

[Ante, pp. 181, 182.]

2. The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures shall not be violated by the United Nations, and no warrants of arrest or of search shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the persons or things to be seized.

[Ante, pp. 182, 183.]

3. No person, acquitted of crime or punished therefor, shall be punished again by the United Nations for the same offense; nor shall any person be compelled by them in any criminal case to be a witness against himself.

[Ante, pp. 184, 185.]

4. In all criminal prosecutions by the United Nations, the accused shall enjoy the right to a speedy and public trial by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, but where not committed within any State, the

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in cases of impeachment, shall be by jury; and such trial shall be held in the State where the said crime shall have been committed; but when not committed within any State, the trial shall be at such place or places as the Congress may by law have directed. —Article III, Sec. 2, cl. 3.	trial shall be at such place or places as the Congress shall by law have directed. The number of jurors, and the majority of them necessary to find a verdict, shall be prescribed by law. [Ante, pp. 187 et seq.]
In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury shall be otherwise re-examined in any court of the United States, than according to the rules of the common law.—Amendment VII.	[See ante, pp. 174, 175.]
[In all criminal prosecutions, the accused shall enjoy the right] to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor; and to have the assistance of counsel for his defense.—Amendment VI.	5. In all criminal prosecutions, by the United Nations, the accused shall enjoy the right to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor; to have the assistance of counsel for his defense; and, under such conditions as may be prescribed by law, to be admitted to bail. Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted. [Ante, p. 189.]
Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted. — Amendment VIII.	

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	ARTICLE V
	LIMITATIONS UPON THE POWERS OF THE COMPONENT NATIONS
No State shall enter into any treaty, alliance, or confederation. —Article I, Sec. 10, cl. 1.	Section 1. No component nation shall enter into any treaty concerning matters subject to the control of the United Nations, or into any alliance or confederation; nor, without the consent of the Congress, into any other treaty, agreement or compact with any other nation. All treaties made by a component nation with nations not members of this union shall contain provision for the peaceable settlement of all disputes arising therefrom.
No State shall, without the consent of Congress . . . enter into any agreement or compact with another State or with a foreign power.—Article I, Sec. 10, cl. 3.	[Ante, pp. 197 et seq.]
No State shall lay any duty of tonnage.—Article I, Sec. 10, cl. 3.	Section 2. No component nation shall, without the consent of the Congress, lay any tax upon the carrying capacity of any ship or other vehicle of international commerce, or on any person because engaged therein; or any imposts or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws, and the net produce of all duties and imposts laid by any nation on imports or exports shall be for the use of the treasury of the United Nations, and all such laws shall be subject to the revision and control of the Congress.
No State shall, without the consent of the Congress, lay any imposts or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws, and the net produce of all duties and imposts laid by any State on imports or exports, shall be for the use of the treasury of the United States; and all such laws shall be subject to the revision and control of the Congress.—Article I, Sec. 10, cl. 2.	[Ante, pp. 201 et seq.]
No State shall, without the consent of Congress. . . . keep troops	Section 3. 1. No component nation shall, without the consent

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or ships of war in time of peace . . . or engage in war, unless actually invaded, or in such imminent danger as will not admit of delay.—Article I, Sec. 10, cl. 3.	of the Congress, in time of peace, keep troops (exclusive of militia) or ships of war in excess of ten per centum of the number of troops and war vessels kept by the United Nations; or engage in war with other nations, unless actually invaded or in such imminent danger as will not admit of delay. [Ante, pp. 205 et seq.] 2. Nothing herein shall be construed to prohibit a nation, which is keeping such troops or ships when it enters this union, to effect a gradual reduction of its forces according to a general plan to be determined by the Congress, until the ten per centum before mentioned be attained. [Ante, pp. 205 et seq.] 3. In no event shall a component nation be required to reduce the number of its troops below a minimum of one-tenth of one per centum of the population of all its territories, estimated as provided in the second clause of the second section of the first Article of this constitution; nor the tonnage of its ships of war below a minimum of one per centum of the tonnage of its merchant marine. [Ante, pp. 208, 209.]
No State shall grant letters of marque and reprisal, coin money, emit bills of credit, make anything but gold and silver coin a tender in payment of debts, pass any bill of attainder, ex post facto	[See *Article VI, Sec. 1.*]

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law, or law impairing the obligation of contracts, or grant any title of nobility.—Article I, Sec. 10, cl. 1.	
No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.—Amendment XIV.	[See *Article VI, Sec. 1.*]
The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude.—Amendment XV.	
Neither slavery nor involuntary servitude, except as a punishment for crime, whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.—Amendment XIII.	[See ante, pp. 192 et seq.]
No new State shall be formed or erected within the jurisdiction of any other State; nor any State be formed by the junction of two or more States or parts of States, without the consent of the legislatures of the States concerned as well as of the Congress.—Article IV, Sec. 3, cl. 1.	Section 4. No component nation shall, without the consent of the Congress(three-fourths of all the votes of both houses concurring) and of the nations directly concerned, acquire in time of peace any sovereignty, control, or jurisdiction over the territory of another nation, whether or not it

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Full faith and credit shall be given in each State to the public acts, records, and judicial proceedings of every other State. And the Congress may by general laws prescribe the manner in which such acts, records, and proceedings shall be proved, and the effect thereof.—Article IV, Sec. 1.

The citizens of each State shall be entitled to all privileges and immunities of citizens in the several States.—Article IV, Sec. 2.

No State shall pass any bill of attainder, ex post facto law, or law impairing the obligation of contracts.—Article I, Sec. 10, cl. 1.

No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.—Amendment XIV.

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be a member of this union, nor in time of war, or as a consequence thereof, but as provided in the first clause of the first section of the fourth Article of this constitution.

[Ante, pp. 209 et seq.]

ARTICLE VI

Relations of the Component Nations to Each Other, and to the Union

Section 1. No component nation shall abridge the privileges and immunities of citizens of other States, either members or not members of this union, or of citizens of the United Nations, by passing any law convicting and punishing them for alleged offenses, or any ex post facto law punishing crime, or any law impairing the obligation of contracts; or by depriving such citizens of life, liberty, or property, but after due opportunity to be heard in a regular, orderly, and appropriate proceeding; or by denying to such citizens the equal security of their persons and property; or in violation of any treaty or agreement, between the nations concerned.

[Ante, pp. 212 et seq.]

Section 2. The United Nations guarantee to the citizens of each component nation, as well as to the citizens of the United Nations, while they are within States not members of this union, such

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The United States shall guarantee to every State in this Union a republican form of government, and shall protect each of them against invasion . . . and on application of the legislature, or of the executive (where the legislature cannot be convened) against domestic violence.—Article IV, Sec. 4.

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privileges and immunities as are secured to aliens by the Law of Nations, or by treaty between the several powers concerned.

[Ante, pp. 215, 216.]

Section 3. The United Nations shall protect each component nation against invasion.

[Ante, p. 217.]

Section 4. 1. In case of internal dissensions within any component State, neither the United Nations nor any other component nation shall intervene by force between the contending parties, but the United Nations, acting on behalf of all the other component nations, shall adhere to the rules of the Law of Nations in such case made and provided, and shall continue to recognize the *de facto* government of such nation as the existing government, which shall exercise and enjoy all the functions, rights, and privileges of the nation under this constitution, until such government be overthrown and a new one be substituted therefor, in which case the new government shall then exercise and enjoy such functions, rights, and privileges.

[Ante, pp. 217 et seq.]

2. If, in consequence of such dissensions, a portion of the territory of the nation concerned is erected into an independent State, the Congress shall proceed to readjust the representation of the original nation in the House of Delegates; and to admit, if it be

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New States may be admitted by the Congress into this Union.—Article IV, Sec. 3, cl. 1.

The Congress shall have power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States; and nothing in this Constitution shall be so construed as to prejudice any claims of the United States, or of any particular State.—Article IV, Sec. 3, cl. 2.

The enumeration in the Constitution of certain rights shall not be construed to deny or disparage others retained by the people.—Amendment IX.

The powers not delegated to the United States by the Constitution, or prohibited by it to the States, are reserved to the States, respectively, or to the people.—Amendment X.

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desired, the newly created nation into the union upon the terms and conditions provided in the fifth section of this Article.

[Ante, pp. 220, 221.]

Section 5. Other nations may be admitted to this union by the Congress, three-fourths of all the votes of both houses concurring, provided that such nations comply with the terms and conditions of the second section of the eleventh Article of this constitution.

[Ante, p. 221.]

ARTICLE VII

The Reserved Rights of the Component Nations

Section 1. Each component nation reserves its sovereignty and independence; and every jurisdiction, power, and right not delegated to the United Nations by this compact, nor prohibited by it to the component nations.

[Ante, p. 222.]

Section 2. 1. The right is reserved to each nation acceding to this constitution to withdraw in peace from the union after twenty-five years from the time of such accession, having previously given one year's notice of such intention to the Congress.

[Ante, pp. 223 et seq.]

2. Upon withdrawal, the seceding nation shall, by the act of

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This Constitution, and the laws of the United States which shall be made in pursuance thereof, and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every State shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding. —Article VI, cl. 2.

The Senators and Representatives before mentioned, and the members of the several State legislatures, and all executive and judicial officers, both of the United States and of the several States, shall be bound by oath or affirmation, to support this Constitution.—Article VI, cl. 3.

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secession, regain complete sovereignty, jurisdiction, and control of all land ceded by it to the United Nations, save such as may be included within the seat of government of the United Nations, and shall be entitled to, and bound by, such adjustment of its share of the common property and debts as the Supreme Court, or the proper section thereof, may determine is equitably due.

[Ante, pp. 227, 228.]

ARTICLE VIII

SUPREMACY OF THE CONSTITUTION, LAWS, AND TREATIES OF THE UNITED NATIONS

Section 1. This constitution and the laws and treaties of the United Nations made in pursuance thereof, shall be the supreme law in every component State; and the judges in every State shall be bound thereby, anything in the constitution, laws, or treaties of any State to the contrary notwithstanding.

[Ante, pp. 229, 230.]

Section 2. All legislative, executive, and judicial officers, both of the United Nations and of the several component nations, shall be bound by oath or affirmation to support this constitution.

[Ante, pp. 230, 231.]

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But no religious test shall ever be required as a qualification to any office or public trust under the United States.—Article VI, cl. 3.

The Congress, whenever two-thirds of both Houses shall deem it necessary, shall propose amendments to this Constitution, or, on the application of the legislatures of two-thirds of the several States, shall call a convention [of the States] for proposing amendments, which, in either case, shall be valid to all intents and purposes, as part of this Constitution, when ratified by the legislatures of three-fourths of the several States, or by conventions [of the people] in three-fourths thereof, as the one or the other mode of ratification may be proposed by the Congress.—Article V.

Provided that no amendment which may be made prior to the year 1808 shall in any manner affect the first and fourth clauses in the ninth section of the first Article; and that no State, without its consent, shall be deprived of its equal suffrage in the Senate. —Article V.

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[See *Article IV, Sec. 2, cl. 2.*]

ARTICLE IX

AMENDMENTS TO THE CONSTITUTION

Section 1. The Congress, by a two-thirds vote of both houses, may propose amendments to this constitution, which shall be valid to all intents and purposes as part of this constitution when concurred in by three-fourths of all the votes of both houses, subject to the provisos contained in the section next following.

[Ante, pp. 232 et seq.]

Section 2. Unless passed by unanimous consent in both houses of the Congress, no amendment shall be valid which is passed, before the expiration of four years from the time it is proposed by the Congress; or which shall deprive any nation of its equal suffrage in the Senate, or of its suffrage in the House of Delegates in proportion to population, or of its equal representation upon the Supreme Court; or which shall deprive any nation of the right to veto a measure of the Congress, or which shall deprive any nation of the right

peaceably to withdraw from the union; or which shall extend the judicial power of the United Nations to any personal proceeding against the sovereign or chief executive of any component nation.

[Ante, pp. 240, 241.]

ARTICLE X

Discipline of a Component Nation

Section 1. If a component State shall refuse or neglect to fulfill its obligations under this constitution, or the laws or treaties made in pursuance thereof, it shall be subject to discipline by the Congress after due warning.

[Ante, pp. 242 et seq.]

Section 2. Discipline of a component State shall extend no further than to an embargo of part or all of the commerce between the State to be disciplined and all the other component States, or to the expulsion of such State from the union.

[Ante, pp. 245, 246.]

Section 3. No disciplinary measure shall be passed except by the assent of three-fourths of all the votes in both houses of the Congress.

[Ante, p. 247.]

Section 4. When a State shall have been expelled from the union, it shall have the same rights and incur the same obliga-

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The ratification of the conventions [of the people] of nine States, shall be sufficient for the establishment of this Constitution between the States so ratifying the same.—Article VII.

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tions with respect to lands ceded to the United Nations and with respect to the common property and the common debts, as if it had withdrawn therefrom under the second clause of the second section of the seventh Article of this constitution.

[Ante, pp. 246, 247.]

ARTICLE XI

Establishment of the Constitution

Section 1. The agreement of eight nations, of which at least five shall be from the following group: Austria-Hungary, France, Germany, Great Britain, Italy, Japan, Russia, and the United States of America, shall be sufficient for the establishment of this constitution between the nations agreeing thereto.

[Ante, pp. 248 et seq.]

Section 2. Such agreement shall be evidenced by the assent of the constitutional treaty-making power of each nation, accompanied by a solemn written affirmation by the sovereign or other chief executive authority, pledging the sacred honor of the nation and of himself and his successors faithfully and honestly to observe this compact in all its parts, leaving all disputes arising under it to be settled in the modes indicated therein.

[Ante, pp. 250 et seq.]

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